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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1901.

No. [illegible] 89.

THE WESTERN UNION TELEGRAPH COMPANY, APPELLANT,

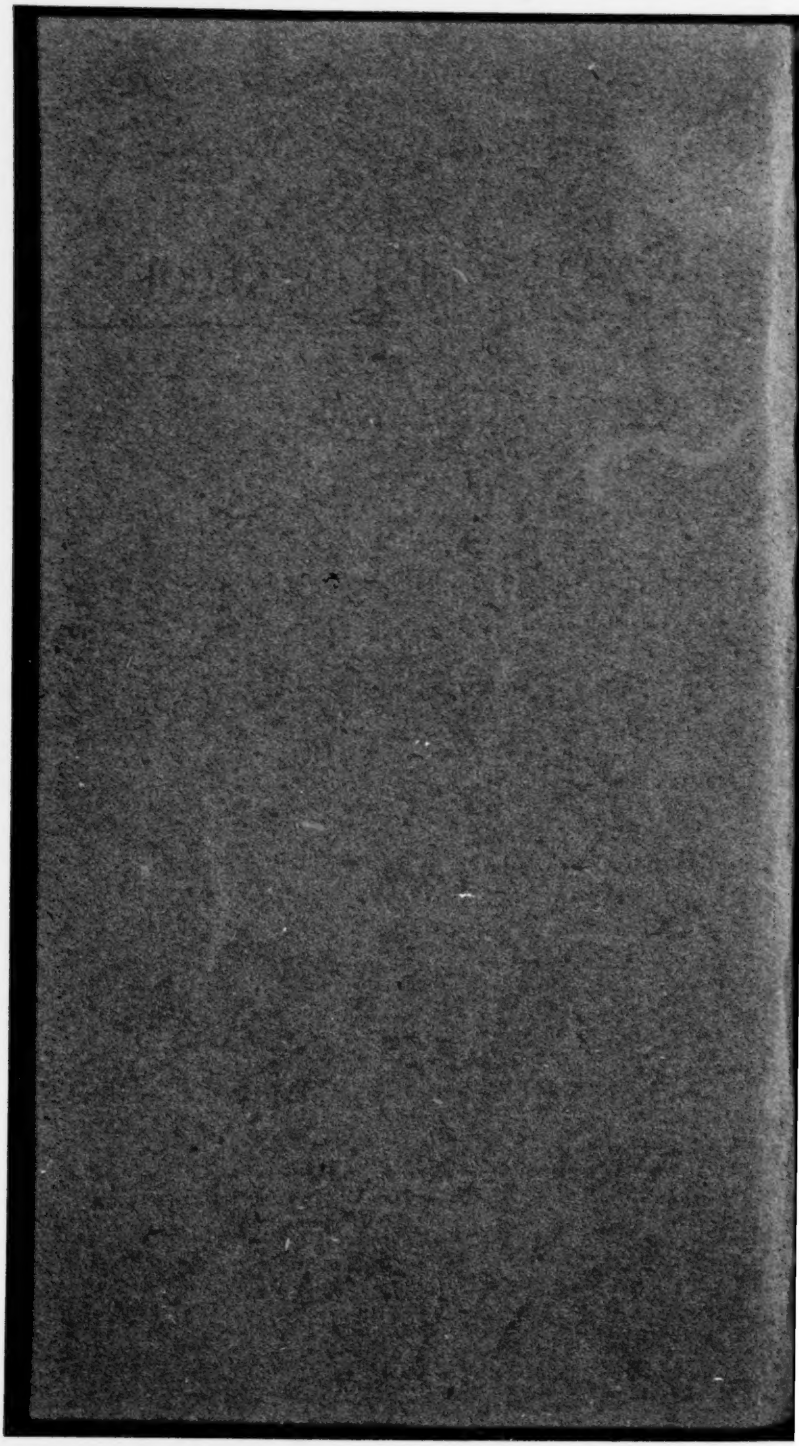
vs.

THE PENNSYLVANIA RAILROAD COMPANY AND THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

FILED [illegible], 1901.

(19,018.)



(19,018.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 367.

THE WESTERN UNION TELEGRAPH COMPANY, APPELLANT,

vs.

THE PENNSYLVANIA RAILROAD COMPANY AND THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

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1 In the United States Circuit Court for the District of New Jersey.

THE WESTERN UNION TELEGRAPH COMPANY, Complainant,
against
THE PENNSYLVANIA RAILROAD COMPANY and THE United New Jersey Railroad and Canal Company, Defendants.
} Bill in Equity.

Bill of Complaint.

(Filed November 22, 1902.)

To the honorable the judges of the circuit court of the United States for the district of New Jersey:

The Western Union Telegraph Company, a corporation duly organized under the laws of the State of New York, and a citizen and resident of said State, having its principal place of business in the State of New York and in the southern district thereof, brings this its bill of complaint against the Pennsylvania Railroad Company, a corporation organized under the laws of the State of Pennsylvania and a citizen and resident of that State, having its principal place of business in the city of Philadelphia, but doing business in the State of New Jersey, and the United New Jersey Railroad and Canal Company, a corporation organized under the laws of the State of New Jersey and a citizen and resident of that State, and says:

1. That this case is one wholly arising between citizens of different States, and that the subject matter thereof and the amount in controversy is of the value of more than two thousand dollars, exclusive of interest and costs, and is, also, one arising under the Constitution and laws of the United States, in that your orator The Western Union Telegraph Company, asserts rights and privileges under acts of Congress and the Constitution and laws of the United States against said defendants.

2. That your orator, The Western Union Telegraph Company, is a telegraph company and a corporation duly organized and existiug under an act of the legislature of the State of New York, entitled "An act to provide for the incorporating and regulation of telegraph companies," passed on the 12th day of April, 1848.

2 3. That the United New Jersey Railroad & Canal Company is a corporation duly organized and existing under the laws of the State of New Jersey, and is the owner of a line of railroad extending from Jersey City in the State of New Jersey to the Delaware river at the city of Trenton in said State, with the following branches:

One extending from Princeton Junction in the county of Mercer to the borough of Princeton in said county.

One extending from the city of Rahway in the county of Union to the city of Perth Amboy in the county of Middlesex.

One extending from South Amboy in the county of Middlesex to the city of Camden in the county of Camden.

One extending from the main line in the town of Harrison, Hudson county, to Centre street, Newark, Essex county.

One extending from Monmouth Junction, Middlesex county, to the southerly terminus of the Rocky Hill railroad, near Kingston, Somerset county.

One extending from Millham Junction on the main line in Hamilton township in connection with Belvidere connection in Trenton city.

One extending from junction with Belvidere connection, and Belvidere Delaware R. R. in Trenton city to connection with Bordentown branch.

One extending from junction with the main line in connection with Belvidere and Delaware railroad and Bordentown connection.

One extending from the main line at Monmouth Junction to Jamesburg, Middlesex county.

One extending from Camden & Amboy division at Bordentown, Burlington county, to Trenton, Mercer county.

One extending from the main line in Florence, to Delaware river, Florence foundry, Burlington county, and said railways are within the State of New Jersey and within this district.

4. That the Pennsylvania Railroad Company is a railroad corporation organized and existing under the laws of the State of Pennsylvania, and is the owner of a line of railroad extending from the city of Philadelphia to the city of Pittsburg, in said State, and that within the State of New Jersey the said Pennsylvania Railroad Company is in possession and control of and operating the lines of railroad hereinbefore described as belonging to the United New Jersey Railroad & Canal Company, under a lease or leases for a period of 999 years from the 1st day of July, 1871.

3 That the railroads of the United New Jersey Railroad and Canal Company hereinbefore described were authorized and constructed and are now maintained, operated and controlled under and by virtue of certain public acts of the legislature of the State of New Jersey, as follows:

(1.) An act entitled "An act to incorporate the Delaware and Raritan Canal Company," passed February 4, 1830.

(2.) An act entitled "An act to incorporate the Camden and Amboy Railroad and Transportation Company," passed February 4, 1830.

(3.) An act entitled "An act to incorporate 'The New Jersey Railroad and Transportation Company,'" passed March 7, 1832.

(4.) An act entitled "An act relative to the Delaware and Raritan Canal and the Camden and Amboy Railroad and Transportation Companies," passed February 15, 1831.

(5.) An act entitled "A further supplement to the act entitled 'An act relative to the Delaware and Raritan Canal and the Camden and Amboy Railroad and Transportation Companies,'" passed March 15, 1837.

(6.) An act entitled "An act to validate and confirm certain agreements between the companies owning the railroad lines between New York and Philadelphia," approved February 27, 1867.

(7.) An act entitled "An act to enable the United Railway and Canal Companies to consolidate their stock and to consolidate or connect with other companies," approved March 17, 1870.

(8.) An act entitled "An act to amend an act entitled 'An act to validate and confirm certain agreements between the companies owning the railroad lines between New York and Philadelphia,'" approved March 14, 1872.

(9.) An act entitled "An act to validate and confirm a certain lease and contract between the companies now known as the 'United New Jersey Railroad and Canal Company' and 'The Pennsylvania Railroad Company,'" approved March 27, 1873.

And your orator further shows that in and by said last-mentioned acts and the several supplements thereto and acts amendatory thereof, and the general public laws of the State of New Jersey, the said several railroads of the said defendants hereinbefore described were created and made and now are public highways, and as such subject to occupation and use by telegraph companies, and by your orator, under the provisions and conditions of the act of Congress of July 24, 1866, as hereinafter fully set forth.

4 5. That your orator was thus organized as a telegraph company in the year 1851, and immediately thereafter began the work of construction and operation of telegraph lines in the State of New York and adjoining States, and has continuously, since that time, been engaged in the work of construction and operation of telegraph lines for the rapid dissemination of intelligence, and has constructed and acquired a continuous system of telegraph lines which now extends through all the States and Territories of the United States and into portions of the Dominion of Canada, and connects with telegraph lines in the Republic of Mexico and through the said land-lines of Mexico with the telegraph lines of the Central and South American republics and by means of submarine cables with the telegraph systems of foreign countries; that at the present time its said system of telegraph lines operated and controlled by it, as aforesaid, comprises, over 192,000 miles of poles and cables, and over 900,000 miles of wire; that upon the said system of telegraph lines your orator has over 23,000 offices, and transmits yearly about 65,000,000 messages for the public and for the Government of the United States, and for the governments of foreign countries, exclusive of messages transmitted upon railway business, exclusive of office messages for your orator and exclusive also of messages forwarded by private parties leasing wires from your orator; that said system of lines has been built up so as to connect with and be largely operated from the central office of your orator, which is sit-

uated in the city of New York, and the said lines radiate therefrom to all the important cities and commercial centres and to many thousand towns and villages in the United States and in North America and through the ocean cables and land-lines above described to all the important commercial centres of this continent and the continent of Europe, and through lines there situated with the telegraph lines in all parts of the world; that among the lines of telegraph forming an important part of said system of your orator and connected with its main office as aforesaid in the city of New York and connecting with other lines of telegraph leading to the important commercial centres of the West and Southwest, are lines of telegraph over and along the lines of railway of the defendants connecting Jersey City with Philadelphia, and there connecting with lines reaching to Pittsburg and the West and the city of Washington and the South, and through those lines to connection with lines to Mexico and Central and South American countries.

5 6. That the said lines of telegraph along the said railways of the defendants in the State of New Jersey were originally constructed and owned by the predecessor in title to your orator—the American Telegraph Company—a corporation of the State of New Jersey, with the consent of or under contracts and arrangements with the railway company then owning the said line of railway, and that the said lines of telegraph were originally constructed more than forty years ago, and that, since the 20th day of September, 1881, the said telegraph lines over and along the right of way of said railroads have been maintained and operated and compensation h-s been made therefor by your orator under the provisions of a contract between the defendant the Pennsylvania Railroad Company and the Western Union Telegraph Company, a copy of which contract is hereto attached marked "Exhibit 1," and made a part of this bill.

7. That since the making of said contract "Exhibit 1," hereto attached, your orator has, at its own cost and expense, reconstructed all the lines originally constructed by said American Telegraph Company and constructed, at its own cost and expense, additional lines and strung additional wires, and is now the owner of all the lines of telegraph existing over and along and upon the right of way of said defendant railway companies, save and except a line of telegraph belonging to said defendant companies, and used by the defendants for railway purposes in the operation of their railroads. That the said lines of telegraph of your orator have been continuously maintained and operated along and upon the said railways with the consent of the said railway companies, under the contract Exhibit 1, since the 20th of September, 1881; that since the 20th of September, 1901, with the consent of the said railway companies, payments have been made by your orator to the said railway companies, in accordance with the provisions of the said contract, and that said payments were received by the said Pennsylvania Railroad Company, as due under and by virtue of the terms of said contract Exhibit 1, as shown by communication from M. T. Wilbur,

treasurer of your orator, to the comptroller of the Pennsylvania Railroad Company, defendant herein, and by the receipts of said Pennsylvania Railroad Company hereto attached and made part hereof as Exhibits 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19. That the payments shown in Exhibits 16, 17, 18 and 19 were made by your orator and received by the said Pennsylvania Railroad Company after the giving and receipt of the notice of May 14, 1902 next, hereinafter stated as Exhibit 20.

6 8. That on or about the 15th of May, 1902, the defendant The Pennsylvania Railroad Company, acting for and representing the defendants, caused to be transmitted to your orator a notice, dated May 14, 1902, requiring the removal of all the poles, wires and telegraph property of your orator upon the right of way and property of the said lines of railway within six months from the first day of June, 1902, and in default of compliance with the requirements of said notice that the said railroad company would cause said poles and other property to be removed at the expenses of your orator, a copy of said notice being hereto attached, made part of this bill, and marked "Exhibit 20."

9. That your orator is advised and so avers that by reason of the facts in this bill of complaint set forth, and by reason of the receipt of said payments, as shown in said Exhibits 2 to 19, both inclusive, the said contract of September 20, 1881 (Exhibit 1), was continued in force, and the said contract and all of its terms and provisions are now in full force and effect, and the said defendants have no right, notwithstanding the said notice of date May 14th, 1902, to remove or cause to be removed from the line of the defendants' said railways the poles, wires and telegraph property of your orator at the end of six months from the 1st day of June, 1902.

10. The said lines of telegraph owned by your orator have been maintained and operated along and over said lines of railway of the defendants at all times prior hereto, and at the present time the said lines are so maintained and operated as not to interfere with the ordinary use and operation of said railway and the ordinary travel thereon, being situated near the outer limits of the right of way of said railway and in such manner as not to obstruct, interfere with, delay or endanger the operation of said railways or with the ordinary travel upon said railways, and that as now located, and maintained and operated, said lines can continued to be so maintained and operated as not to interfere with the future operation and maintenance of said railways or the ordinary travel upon said railways, subject only to such slight changes in the location of some of the poles of said lines as may be incident to the construction of additional tracks upon said right of way or the shifting of tracks already existing upon said railways, necessitating the removal at some point or points of some of the structures connected with said telegraph lines, which removal or removals your orator is ready at all times to make.

(11.) Your orator further says that the connections of all
7 parts of the system of telegraph lines, owned and operated by your orator at Jersey City, are by means of cables laid with

the consent of the defendants and pursuant to law and acts of Congress in that behalf provided under the waters of the Hudson river and navigable rivers of the United States and landing upon the rights of way and property of said railway companies used in connection with the operation of their said railroads.

(12.) Your orator says further that, upon the receipt of the said notice, Exhibit 20, attached hereto, through its president, it communicated with the said defendant, The Pennsylvania Railroad Company, as shown by letter of May 20th, 1902, copy of which is hereto attached, made part hereof, marked "Exhibit 21."

That in reply to your orator's communication, Exhibit 21, your orator received a communication from the said defendant Pennsylvania Railroad Company, dated the 21st of May, 1902, copy of which is hereto attached, made part hereof, and marked "Exhibit 22."

That, under date of June 26th, 1902, your orator caused a reply to be transmitted to the said communication, which reply is marked Exhibit 23, asking a conference of the said defendant Pennsylvania Railroad Company for the purpose of adjusting and agreeing upon the compensation to which the defendant's company would be entitled for the use by your orator for its said lines of telegraph of your orator over and along and upon the right of way of the said railroad companies, a copy of which communication is hereto attached, made part hereof, and marked "Exhibit 23."

That in reply to said communication, Exhibit 23, under date of July 5, 1902, your orator received a communication signed by the president of said defendant companies, a copy of which is hereto attached, made part hereof and marked "Exhibit 24."

That said defendant Pennsylvania Railroad Company has refused to negotiate with your orator for the continued use and occupation of said railroads, and has refused to treat with your orator as to the compensation to be paid by your orator for telegraph uses under and pursuant to the said acts of Congress.

(13.) Your orator further shows that the defendant The Pennsylvania Railroad Company in giving to your orator the said notice to remove its poles, wires and telegraph fixtures from the premises of the said defendants and in refusing to negotiate for the use of its said railways has not been impelled thereto by any compulsion or necessity to use the space occupied by your orator's said telegraph
8 lines for railroad purposes, for as your orator has fully shown and set forth and here alleges said telegraph lines do not and will not interfere with the ordinary travel and use of said railways, but your orator is advised and avers the fact to be that the purpose of the said defendants is, upon the removal of said telegraph lines of your orator, to place or allow to be placed upon said lines of railway telegraph lines to be owned or used by another telegraph company in the same or substantially the same location now occupied by your orator's lines, and to be used in the same or substantially the same manner as your orator now uses its said lines of telegraph on said railroads.

14. Your orator says that the Congress of the United States passed an act, approved July 24, 1866, entitled "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military and other purposes."

That the first section of said act is as follows:

"Any telegraph company now organized or which may hereafter be organized under the laws of any State shall have the right to construct, maintain and operate telegraph lines through and over any portion of the public domain of the United States, over and along any of the military or post roads of the United States which have been or may hereafter be declared such by law, and over, under or across the navigable streams or waters of the United States; but such lines of telegraph shall be so constructed and maintained as not to obstruct the navigation of such streams and waters, or interfere with the ordinary travel on such military or post roads."

The second section of said act is as follows:

"That telegraphic communication between the several departments of the Government and the irofficers and agents, shall, in their transmission over the lines of any such telegraph companies, have priority over all other business, and shall be sent at rates to be annually fixed by the Postmaster-General."

Section 3 of said act is as follows:

That the rights and privileges hereby granted shall not be transferred by any company acting under this act to any other corporation, association or person; provided, however, that the United States may, at any time after the expiration of five years from the date of the passage of this act, for postal, military, or other
9 purposes, purchase all the telegraph lines, property and effects of any or all of said companies, at an appraised value to be ascertained by five competent disinterested persons, two of whom shall be selected by the Postmaster-General of the United States, two by the company interested, and one by the four so previously selected.

Section 4 of said act is as follows:

That before any telegraph company shall exercise any of the powers or privileges conferred by this act, such company shall file their written acceptance with the Postmaster-General of the restrictions and obligations required by this act.

15. Your orator further says that, complying with the provisions of the said act of Congress, it did, on or about the 8th day of June, 1867, duly file its written acceptance with the Postmaster-General of the United States of the restrictions and obligations of said act, (a copy of which is hereto annexed, marked "Exhibit 25," and made part of this bill of complaint), and thereupon your orator became entitled to all the rights and privileges conferred by said act and burdened with all the obligations imposed thereby, and that it has continuously, since the filing of its said written acceptance, as aforesaid, fully performed, and at the present time is fully performing, all the obligations and requirements of said act, and has carried upon its lines of telegraph, messages for the Government of the

United States and for the several departments thereof, giving the same priority over all other business and at rates annually fixed by the Postmaster-General, which rates have been much less than the ordinary reasonable rates charged to and paid by individuals and the public for the transmission of like messages and communications.

16. Your orator further says that, by an act of Congress approved June 10, 1872, entitled "An act making appropriations for sundry civil expenses of the Government, for the fiscal year ending June 30, 1873, and for other purposes," the following was among other things enacted:

"Provided that the Secretary of War be and he hereby is authorized and required to provide, in the system of observations and reports in charge of the chief signal officer of the army, for such stations, reports and signals as may be found necessary for the benefit of agricultural and commercial interests; and provided that no part of this appropriation nor of any appropriation for the several departments of the Government shall be paid to any telegraph company which shall neglect or refuse to transmit telegraphic communications between said departments, their officers, agents or employés, under the provisions of the second section of chapter 230 of the statutes of the United States for the year 1866, and at rates of compensation therefor to be established by the Postmaster-General; provided also that, whenever any telegraph company shall have filed its written acceptance with the Postmaster-General of the restrictions and obligations required by the act approved July 24, 1866, entitled 'An act to aid in the construction of telegraph lines and to secure to the Government the use of the same for postal, military and other purposes,' if such company, its agents or employés shall hereafter refuse or neglect to transmit any such telegraphic communications as are provided for by the aforesaid act or by the joint resolution approved the 9th day of February, 1870, 'to authorize the Secretary of War to provide for taking meteorological observations at the military stations and other points of the interior of the continent and for giving notice on the northern lakes and seaboard of the approach and force of storms,' such telegraph company shall forfeit and pay to the United States not less than one hundred and not exceeding one thousand dollars for each refusal or neglect aforesaid, to be recovered by an action or actions at law in any district court of the United States."

17. Your orator avers that, in compliance with the said last-named act, it has carried for the Government of the United States over lines situated over and along the lines of railway of the defendant companies, and upon its other telegraph lines connected therewith, at all times since the passage of said act, at rates far below the reasonable rates charged to and paid by individuals or to the public for similar services, communications relating to the meteorological and signal service from the various stations maintained by the Government of the United States throughout the interior of the continent and along the seaboard, such communications being especially difficult of transmission from the fact that they are for the most part

written in cipher, for the purpose of saving expense to the Government of the United States and many words are indicated by a single arbitrary word or character; but that, nevertheless, even at the reduced rates at which your orator carries such communications the charges therefor amount to many thousands of dollars annually.

11 18. Your orator further says that the Congress of the United States, by an act approved June 18, 1872, enacted that all railroads or parts of railroads which were then or might thereafter be in operation, and all letter-carriers' routes established in any city or town for the collection and delivery of mail matter should be post routes, and thereafter by an act approved March 1, 1884, all public roads and highways, while kept up and maintained as such, were declared to be post roads.

19. That the said acts of Congress apply to the railroads of the defendants herein mentioned and described, and the said railroads are post roads of the United States duly established by act of Congress in that behalf provided, and are also public roads and highways under said acts of Congress and the said laws of New Jersey relating to the defendant railway companies. That your orator, The Western Union Telegraph Company, having duly filed its written acceptance with the Postmaster General of the restrictions and obligations of the said act of July 24, 1866, and fully complied with all of the restrictions, obligations, duties and requirements of said acts of Congress above mentioned, has the right to construct, maintain and operate lines of telegraph over and along the railroads of the defendants herein mentioned and described so as not to interfere with the ordinary travel thereon, and the plaintiff is ready and willing and hereby offers to make to the defendants, and each of them, a just compensation for the use by your orator of the roadway or right of way of the defendant companies for your orator's telegraph lines under and pursuant to said acts of Congress, over and along the said railroads of the defendants.

20. That the said grant by the United States in and by the aforesaid acts of Congress of the right to construct, operate and maintain the telegraph lines of the plaintiff on the railroads of the defendants was a grant made upon a full, valuable and continuing consideration paid and rendered by your orator to the United States, which consideration was the agreement of the plaintiff evidenced by your orator's written acceptance, of the act of July 24, 1866, duly filed with the Postmaster General, of the restrictions and obligation- of the said act, as hereinbefore set forth, and the full and continuous performance by your orator of all of the obligations and duties created and imposed by said acts of Congress. That your orator has since said acceptance of said act performed all the obligations and duties required by said acts and by law, and your orator has ever since the date of filing of said acceptance given, and is

12 still giving, to the United States, and to the several departments of the Government, and their officers, priority over all other business in the transmission of telegrams on the lines of your orator,

situated over and along the railroads of the defendants, at rates annually fixed by the Postmaster-General, which rates are far less than the rates charged, paid and received by your orator for the same kind of services from the public, and greatly less than the reasonable value of the said services rendered by your orator to the Government. Your orator has accepted, among others, the provisions of the said act of Congress of July 24, 1866, giving to the United States the right to purchase all of its telegraph lines and effects at an appraised value to be ascertained by five competent disinterested persons as provided by the said act of Congress. Your orator states that by reason of the premises, its acceptance of the said act of Congress, the construction and maintenance of its telegraph lines thereunder, and the continued performance by your orator of the requirements of the said acts of Congress, the right granted by the said act of July 24, 1866, to your orator to construct, maintain and operate its lines of telegraph over and along the railroads of the said defendants became vested, and the said grant is in full force and effect, and your orator avers that its right to construct, maintain and operate its said lines of telegraph over and along the railroads, and right of way of the defendant companies is complete, your orator being under an obligation or liability only to make fair and reasonable compensation to the defendants for the value of the use by your orator of the said right of way or railways of the defendants in the manner and under the restrictions of the said acts of Congress.

21. That the plaintiff, on June 8, 1867, duly accepted as aforesaid the said act of July 24, 1866, and acting thereon immediately entered upon the performance and has ever since continued to perform all of its duties and obligations thereunder to the United States and the public, and the plaintiff was in possession and enjoyment of its telegraph lines over and along said defendants' railroads herein mentioned and described and of the rights granted and conferred upon it by said act of July 24, 1866, long before and at the time the Pennsylvania Railroad Company became the lessee of said railroads or acquired any interest therein or use or control thereof, of all of which the defendants then and there had notice, and the plaintiff is advised and now avers that the rights of the defendants in said railroads are subject to the rights of the plaintiffs under said acts of Congress and the laws of New Jersey and in particular the
13 plaintiff avers that the said lease of said railroads to The Pennsylvania Railroad Company, defendant herein, and any rights acquired by said Pennsylvania Railroad Company in or to said railroads or the use, possession or control thereof are subject to the rights of the plaintiff granted and conferred upon it by the said act of Congress of July 24, 1866, and acquired by the plaintiff by its acceptance of said act and its performance of all the obligations and requirements of said acts of Congress.

22. Your orator further says that prior to the expiration of the period named in said contract of Sept. 20, 1881, your orator entered into negotiations with the officers of said Pennsylvania Railroad

Company respecting an arrangement as to the continuance of the maintenance and operation of the telegraph lines of your orator over and along the lines of the railways controlled and operated by the said railroad company, and that said negotiations proceeded so far that substantially all the terms and conditions of a contract were agreed upon and reduced to writing, there remaining only a few details to be ascertained in order to embody in the said contract a complete agreement respecting the continued maintenance and operation of your orator's said telegraph lines; and that your orator, relying upon the promises and representations of said defendant that such an arrangement would be made, took no further steps to enforce its right to construct, maintain and operate its said lines over and along the railways of defendant until the receipt of said notice from the said defendant The Pennsylvania Railroad Company, dated the 14th day of May, 1902 (Exhibit 20) hereto attached and hereinbefore set forth; that following the receipt of said notice your orator sought to treat with the said defendant The Pennsylvania Railroad Company as to the amount of compensation to be paid by your orator for the use of the right of way or roadway of the defendants whereon to construct, maintain and operate the telegraph lines of your orator over and along the said right of way of said railroads, whereby your orator's lines of telegraph might connect with the lines beyond the defendant's lines of railway and form continuous lines for the transmission of intelligence to other States and to foreign countries for the public and the Government of the United States; but the said defendant refused wholly to treat with your orator as to the amount of compensation to be thus paid.

23. Your orator is informed and believes that the said defendants will insist that your orator has no right or privilege of con-
14 structing, maintaining and operating telegraph lines over and along the defendants' lines of railway, except as such right may be conferred upon your orator by a contract with or by the permission of the defendants; that said defendants insist that the said acts of Congress, although accepted and performed by your orator as herein shown, confer no right or privilege upon your orator to construct, maintain and operate its telegraph lines over and along the defendants' said railways, except as the said defendants may consent thereto and upon the terms and conditions fixed by the said defendants, and that the said contract of September 20, 1881, fixed for the period named in the said contract the terms and conditions upon which alone your orator had the right to construct, maintain and operate telegraph lines over and along the said defendants' railways, and that upon the termination of the period named in said contract the right of your orator to construct, maintain, and operate its lines of telegraph over and along the defendants' said lines of railway wholly ceased and determined; and that the sole right of your orator in or to said telegraph lines is the right of removal of the poles, wires and fixtures connected therewith, according to the terms and conditions prescribed in the said contract of September 20, 1881; but your orator insists that in and by the said acts of Congress here-

-nbefore set forth their acceptance and performance by your orator of the duties and obligations created and imposed by said acts, as in this bill of complaint set forth, there was granted to your orator and your orator has the right to construct, maintain and operate its telegraph lines over and along the defendants' said lines of railway, as in said acts provided, subject only to the condition that your orator should pay to the said defendants a reasonable compensation for the use of the right of way or roadway of the defendants occupied by your orator's telegraph lines. Your orator shows that the right thus conferred in and by the said acts of Congress upon your orator, your orator has never waived nor relinquished and that in accepting the provisions of the said acts of Congress it entered into obligations and undertakings with the Government of the United States which would effectually preclude it from waiving or relinquishing, and your orator avers that it has never waived or undertaken to waive or relinquish the same.

24. Your orator alleges that said defendants deny and repudiate any right on the part of your orator, even upon tender or payment to the defendants of just compensation therefor, to construct or to continue to maintain and operate its telegraph lines or any telegraph lines over and along the defendants' said lines of railway, notwithstanding the provisions and conditions of the said act of Congress of July 24, 1866, and the laws of the State of New Jersey above mentioned. Your orator avers, upon ascertaining the fact that the said defendant, The Pennsylvania Railroad Company, was wholly unwilling to treat with your orator as to the amount of such compensation and wholly denied as aforesaid the rights of your orator, that thereupon your orator, in aid of its rights and equities as shown in this bill of complaint, duly filed its petition and brought its action in this court, upon the law side thereof, against the defendants in this suit, to have ascertained and determined the amount of compensation to which the defendants herein would be entitled from your orator, for the use of the right of way of the defendants' said railroads in the State of New Jersey, whereon your orator might construct, maintain and operate its said lines of telegraph, and that upon the payment of said sum thus ascertained your orator would have as against the defendants the right to construct, maintain and operate telegraph lines along and upon the right of way or roadway of the railways of the defendants herein, but subject always to the conditions named in the said act of Congress of July 24, 1866, that the same should not interfere with the ordinary travel upon said railways, nor with the operation, use, possession and control of said railways by the said defendant railway companies. That a copy of your orator's petition in the said action as filed is hereto attached, marked "Exhibit 26" and made part of this your orator's bill of complaint; that in the said action thus brought summons has been issued and service made or will speedily be made upon the defendants herein, and your orator expects in due time as soon as the said action can be heard, that the court will order and adjudge the amount of compensation upon the

payment of which as thus adjudged by the said court, your orator will be entitled to continue to construct and to maintain and operate telegraph lines along and over the said lines of railway, owned and controlled by the said railway companies under and subject to the conditions and provisions of said act of Congress of July 24, 1866.

25. Your orator further says that it stands ready and is able and willing and hereby offers to pay to the said defendant railway companies such just and reasonable compensation as may be decreed by this court under this its bill of complaint or in the said action filed on the law side of this court, for the use of the right of way of the defendants' railroads on which to construct, maintain,
16 and operate your orator's telegraph lines over and along the right of way of the said railway companies, as provided in the aforesaid act of Congress of July 24, 1866, and under the terms, conditions, and restrictions thereof, and is willing and hereby offers to furnish such security for the payment of such sum as may be decreed by this court in this cause or that may be adjudged in the said action upon the law side of this court, or as the court may otherwise ascertain and determine and herewith tenders such security upon such terms and conditions as this court may fix.

26. Your orator says further that said lines constitute some of the main lines of communication for the transmission of telegraphic messages between the city of New York and foreign countries and the larger cities of the West and Southwest and that the defendant The Pennsylvania Railroad Company is threatening at the termination of the six months named in its notice, dated May 14, 1902, to wit, on the first day of December, 1902, to sever the lines of telegraph from their connection with the other lines of telegraph owned and operated by your orator, and thus cut off and destroy the same for the purposes of telegraphic communication and thereby deprive a large number of the public in the United States and foreign countries of the means of telegraphic communication now enjoyed by them, and also to cripple and deprive the several departments of the Government of the United States of telegraphic facilities on said lines of railway now enjoyed by them, and the said defendants unless restrained by this order of the court will carry such threats into execution.

27. Your orator further says that the cutting down of the said poles and the removal of the said wires and the severing of the connections with the said cables, as threatened by the defendant, The Pennsylvania Railroad Company, would inflict irreparable injury upon your orator and would practically destroy the entire value of all of the telegraphic properties of your orator now constructed, maintained and operated along and upon the right of way of the defendant railway companies as hereinbefore set forth; that the value of said poles when taken down for removal would be but a small portion of their value as working parts of your orator's telegraphic system, and that the wires thereon would be of comparatively small value when taken down and removed from connection with the said poles; that said properties are of such character that

the act of removal would largely destroy their value, and that if the said Pennsylvania Railroad Company, defendant herein, is
17 allowed to carry out its threats as aforesaid, it will be the practical destruction of so much of your orator's telegraphic system, comprising a large number of wires upon which are now being carried most important business for the public and for the Government of the United States; that said telegraph lines along and upon the right of way of the railways of the said defendant company do not interfere with the ordinary operation of said railways, and wi l not so interfere, and the continuance of the said lines there will be of but slight detriment, in any aspect of the situation, to the said defendants or either of them.

28. Your orator further avers that there is no other company equipped with the facilities to transmit for the public the business which is now being transmitted over the lines situated along and over the right of way of the defendant railway companies, and that if the public and the Government of the United States were deprived of the facilities afforded by the said lines along and over the defendants' railways, a long period of time must elapse before facilities to take their place can be furnished by your orator, or by any other company engaged in the business of telegraphing.

29. Your orator says further that it is diligently prosecuting said action on the law side of this court for the ascertainment of the amount of compensation to the said railway companies defendant herein for the right to the use of said railroads to maintain and operate its telegraph line along and over the lines of said railways as prescribed in said act of Congress of July 24th, 1866; and that it will continue to prosecute the same to a final determination as rapidly as the business in said court will permit the said cause to be heard and determined and without any unnecessary delay.

30. Your orator avers that such forcible removal of your orator's telegraph lines by the defendant as threatened is contrary to the intent and purposes of said acts of Congress, and would work great, irreparable and lasting damage and injury to your orator, to the public and to the Government of the United States and which could not be compensated for in money; and that the value of the use of the right of way of the defendants by your orator is of comparatively small value, works no substantial damage or injury to the defendants and can be fully compensated for in money.

31. Forasmuch, therefore, as your orator can have no adequate relief except in this court and to the end that the defendants may, if they can, show why your orator should not have the relief
18 hereby prayed make full disclosure and discovery of all matters aforesaid according to the best of their knowledge and belief and full, true and perfect answer make to the matters hereinbefore stated and charged, but not under oath, answer under oath being expressly waived, your orator prays that this court ascertain, order, adjudge and decree the amount of compensation to be paid by your orator to the defendants, as their rights may severally appear, for the construction, maintenance and operation of your orator's

telegraph lines over and along the right of way of the defendants' said railroads under the terms, provisions and restrictions of said acts of Congress hereinbefore mentioned, or if this court shall order and determine, that the amount of such compensation to the defendants shall be such amount as shall be determined or adjudged in the said action at law, that upon due payment of such compensation by your orator to the defendants, this court will order, adjudge and decree that your orator is entitled to a perpetual injunction against the defendants herein and each of them, restraining them and each of them from in any manner interfering with the location, construction, maintenance and operation of your orator's said lines of telegraph upon the roadway or right of way of the said defendants' under and subject to the provisions and restrictions of the said act of Congress of July 24th, 1866, and meanwhile and until the final decree of this court that a temporary injunction be issued against the defendants prohibiting and restraining them and each of them from in any manner interfering with the use and operation of the telegraph lines of your orator upon the said roadway and right of way of the defendants pending the determination of the said action at law, or until the further order of this court in the premises. And for such other and further relief as the case may require and to your honors may seem just.

May it please your honors to grant unto your orator not only the writ of subpœna of the United States of America to be directed to the defendants The Pennsylvania Railroad Company and The United New Jersey Railroad and Canal Company commanding them and each of them by a certain day and under a certain penalty to be and appear before your honors in this honorable court then and there to answer all and singular the premises and to stand and abide and perform such order and decree therein as to your honors shall seem agreeable to equity and good conscience; but also the United States writ of injunction, restraining them and each of them, their servants, agents and employees as aforesaid.

19 This bill of complaint is filed under the corporate seal of the complainant.

ROBERT C. CLOWRY, *President.*

[SEAL.]

Attest: A. R. BREWER, *Secretary.*

RUSH TAGGART,
Solicitors for Complainant.
JOHN F. DILLON,
RICHARD VLIET LINDABURY,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

Robert C. Clowry, being duly sworn, says he is president of The Western Union Telegraph Company, plaintiff in the above-entitled action; and is familiar with the affairs of said corporation; that he

has read the foregoing petition and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

ROBERT C. CLOWRY.

Sworn to before me this 15th day of November, 1902.

CHARLOTTE A. VAN BRUNT,

[L. S.] *Notary Public, Kings County, No. 4.*

Certificate filed in New York county.

EXHIBIT 1.

This agreement, made the twentieth day of September, anno Domini one thousand eight hundred and eighty-one (1881), between the Pennsylvania Railroad Company, a corporation of the State of Pennsylvania, hereinafter for brevity designated as the railroad company, and the Western Union Telegraph Company, a corporation of the State of New York, hereinafter for brevity designated as the telegraph company, witnesseth:

20 First. Said railroad company hereby grants, to the extent of its corporate power so to do, to the said telegraph company, a right to place, maintain and use upon the line of the right of way of the Pennsylvania railroad, and of the railroads owned, operated, or leased by it, or in which it is otherwise interested, as enumerated in the schedule hereto attached, marked "A," and made part of this agreement, a single line of telegraph poles, except where two are hereinafter authorized, with the privilege of erecting and maintaining thereon such number of wires as the telegraph company may from time to time elect, said line to be located and placed under the direction of the general manager of the railroad company, or such other officer as the railroad company may designate for that purpose: *Provided*, That the location of any of the telegraph company's poles shall, from time to time, be changed from one point to another on the railroad right of way at the expense of the telegraph company, in such manner as the general manager, or other proper officer of the railroad company may direct, so as not to interfere with the operations of the railroad: *Provided, however*, That the telegraph company shall have the right to maintain two lines of poles and such number of wires as it may deem necessary, on the south side of the main line of the railroad company's railroad between Jersey City and West Philadelphia, it being understood that the railroad company may require and permit the telegraph company either to put its wires under the railroad right of way, or to remove them from said right of way through the various cities, towns or villages, or any of them, between West Philadelphia and Jersey City, including both of those cities, the telegraph company reserving the right to elect whether it shall put its wires under

the railroad right of way or transfer them to other routes. The telegraph company shall have the right to maintain, renew and repair its underground line now running through the property of the railroad company in Jersey City. And should additional corporate action upon the part of any of the corporations controlling the roads named in "Schedule A," hereto attached, be necessary to cover the lines therein named, the railroad company will also endeavor to procure such corporate action upon the part of such corporations.

Second. Said railroad company also grants to said telegraph company the right to lay down and maintain submarine cables, and to connect the same on the shores of any stream with the land poles or wires of the telegraph company, on the rights of way and
21 grounds of the railroad company, in such locality, and in such manner, under the direction of the general manager aforesaid, or such other officer as the railroad company may designate for that purpose, as shall not interfere with the operations of the railroad.

Third. Said railroad company reserves to itself the option of determining whether the telegraph company may place a wire or wires, in addition to those provided for in the seventh clause hereof, upon the poles of the railroad company, upon any or all of the lines embraced in said schedule, the telegraph company agreeing that if such privileges be granted to and availed of by it, it will pay to the railroad company for the same, four dollars per mile per annum for each wire placed in pursuance thereof.

Fourth. The railroad company agrees to transport to and from regular stations, free of charge, over said lines of railroad embraced in this contract, the officers and employees of the telegraph company when engaged in building and repairing, equipping, and operating the telegraph lines and wires hereby authorized upon said railroads, and also to transport free of charge to regular stations over said railroads the material to be used in the building or repairing, equipping or operating of said telegraph lines and wires herein authorized to be constructed, maintained, or operated on the railroads named in Schedule A; the telegraph company hereby agreeing that it will hold harmless and indemnify the said railroad company against all responsibility for damages, costs, or expenses that may be incurred or recovered for any injury by accident or otherwise to any person or property transported free under the terms of this agreement.

Fifth. The railroad company agrees that it will not hereafter grant the right to any other party or telegraph company, to erect, maintain, or use poles or wires upon the right of way, or the buildings, bridges, or other structures or fixtures connected with the right of way of any of the railroads embraced in this agreement, unless such other party or telegraph company shall pay annually for such right in money an amount equal to the total annual money compensation herein agreed to be paid by the telegraph company, to wit:

If under the terms of this agreement, the railroad company shall hereafter grant to any other party or telegraph company the right

to erect poles with wires thereon, the railroad company shall have the right, anything in this agreement contained to the contrary notwithstanding, to make the same terms, or terms which in
22 the opinion of the railroad company's board of directors will be equally favorable, with such party or telegraph company, as to receiving and transmitting messages for the public, as are made with the Western Union Telegraph Company in the ninth article of this agreement. The provisions of this section not to apply to underground lines of wire.

Sixth. The telegraph company agrees to pay annually to the railroad company during the continuance of this agreement for the privileges granted in the first and second clauses hereof, whether the same be availed of or not, the sum of $75,000 in monthly installments of $6,250 each, upon the twentieth day of each month, the year to begin on the twentieth day of September, 1881, and the first payment to be made on the twentieth day of October, 1881, and also to sell, transfer and deliver over to the railroad company as an additional compensation for the privileges hereby granted, the entire line of poles as it now exists on the north side of the railroad company's railroad, between Jersey City and Kensington (except through Marion, East Newark, Newark and Rahway), and also six of the best number eight or nine gauge continuous wires now upon said poles, and on the poles of the telegraph company through said excepted places, and two additional like wires upon the poles of said telegraph company on the south side of said road from Philadelphia to Jersey City, the existing poles and wires so to be delivered to the railroad company, being of an estimated value of forty-one thousand dollars ($41,000), with the agreement that any wires in excess of the six wires upon the poles on the north side of the said road so to be transferred to the railroad company shall remain thereon until they can be removed by the telegraph company, which shall not be later than one year from date: *Provided, however*, That the telegraph company may leave and continue on said poles two wires, as provided for in section seventh.

Seventh. The telegraph company hereby grants the right to the railroad company to place two of its wires upon the poles and in the cable houses of the telegraph company without charge, and also the right to place, from time to time, additional wires necessary for the business of the railroad company upon any of the poles and in the cable houses of the telegraph company on said lines of railroad, upon the payment by the railroad company of four dollars per mile per annum for each of such additional wires; and the railroad company hereby grants the right to the telegraph company to place two of its wires upon the poles and in the cable houses of the
23 railroad company without charge. The telegraph company will furnish at cost, or the railroad company may furnish at its own expense, cable conductors for connection with the railroad company's wires.

Eighth. The telegraph company agrees to transmit over its wires for the railroad company, during the continuance of this agreement,

with the same promptness, efficiency, and dispatch as it does for any other party, for the sum of fifteen thousand dollars ($15,000) per annum, payable in equal monthly installments of one thousand two hundred and fifty dollars ($1,250) each, all messages pertaining to the business of said railroad company, or of any of the companies whose lines are included in Schedule A and covered by this agreement, or any message relating to its business sent by an officer of either company as embraced in said schedule, to and from all points on the lines of said telegraph company throughout the United States and the British provinces, now erected or which may hereafter be erected, as well as upon any lines which the said telegraph company may now or hereafter during the continuance of this agreement secure the use of by purchase, lease, or otherwise in the United States or the British provinces.

The transmission of messages for the railroad company or any of the companies whose lines are included in Schedule A, and the transportation of employés of the telegraph company, as hereinbefore provided, shall be authorized by franks and passes to be issued by each party to the other, upon application of a properly authorized officer of the party requiring such service.

Ninth. At all telegraph stations of the railroad company, upon the lines of said railroads, the railroad company shall, at its option, have the right to receive, transmit, and deliver messages for the public, and if such messages be sent over the telegraph company's wires—the right so to forward them being hereby given to the railroad company—it shall be at the tariff rates of the telegraph company. The operators of the railroad company receiving, forwarding, and delivering messages so interchanged between the telegraph company's and the railroad company's lines, shall be considered as acting as the agents of the telegraph company, and such operators shall remit all receipts for such messages to the telegraph company, which company shall furnish to the railroad company a monthly statement thereof, and the telegraph company agrees to pay monthly to the railroad company one-half of the cash receipts for such service, after deducting all tolls on ocean cable messages and tolls belonging to lines of other companies paid on such messages, which
24 shall be retained in full by the telegraph company. If the railroad company grant the right to any other telegraph company to have an office or offices in any of the depots or buildings of the railroad company, the same privilege in the same depot or building shall be granted to the Western Union Telegraph Company on as favorable terms and with as favorable location as shall be granted to said other company.

Tenth. The railroad company shall have the right to the free use of any telegraphic patent rights, or new discoveries, or inventions that the telegraph company now owns, uses, or controls in its general telegraph business, or which it may hereafter own, use, or control as aforesaid, so far as the same may be necessary to properly carry on the business of railroad telegraphing on the line of said railroads as provided for herein.

Eleventh. The telegraph company agrees that, as a part of the service for which it is to receive the allowance of fifteen thousand dollars ($15,000) under article eighth of this agreement, it will receive and transmit cable dispatches on the business of any of said railroad companies to Europe and other foreign countries, aggregating at current rates the sum of one thousand dollars ($1000) per annum, the railroad company agreeing to pay any excess on cable messages over that amount in each year.

Twelfth. Neither the general terms of this agreement, nor any stipulation contained herein, shall have the effect of creating a covenant of quiet enjoyment, either expressed or implied, on the part of the railroad company, or any other company whose action it may procure, and in favor of the telegraph company, as against the owner of the fee simple of the land over which the railroad or other company has the right of way, nor as against the exercise of the power of eminent domain upon the part of any other company possessing it by grant from the Commonwealth or State creating such corporation; *And it is further agreed*, That if anything herein contracted to be done, or not to be done, shall be held to be invalid for want of corporate or legal authority to make an agreement to such an extent, it shall not give to either party any claim for damages by reason of an excess or defect of corporate or legal authority in so doing.

Thirteenth. This agreement is to continue in force for and during the term of twenty years from its date, and shall be binding upon the respective companies, their successors and assigns, and neither party shall have the right to assign the whole, or any part hereof, without the consent of the other, given in writing: *Provided*, That if before the expiration of said twenty years the railroad company shall, from any cause, cease to own, operate or control any or either of the railroads enumerated in Schedule A, without having procured the corporate assent to this agreement of the proprietary corporation, this agreement shall become inoperative as to such railroad or railroads after the railroad company shall cease to own, operate or control the same, and in such event, the annual payment provided for in the sixth section hereof shall be reduced in such proportion not exceeding the mileage of the railroad or railroads so ceased to be owned, operated or controlled, as may be agreed upon between the parties hereto; and in case they cannot agree, such proportion as may be fixed by the arbitrators as per article eighteenth of this agreement.

Fourteenth. It is a condition of this agreement that the railroad company is not to be responsible for, and the telegraph company hereby covenants and agrees to save the railroad company harmless, and indemnify it against any loss or damages of any kind arising from any injury to persons in the employ of, or property belonging to the telegraph company, while being carried free over any of said railroads under this agreement; and the telegraph company shall not be responsible for, and the railroad company agrees to indemnify and save harmless the telegraph company against any

loss or damages of any kind arising from or on account of any error or failure in the transmission or delivery of messages sent for the railroad company under this agreement.

The telegraph company hereby assumes all responsibility for damages resulting from errors, failures, delays, or other defaults or mishaps in the transmission or delivery of messages occasioned by the fault of persons employed directly by it; and the railroad company hereby agrees to pay one-fourth (¼) the amount of any damages, costs, or legal expenses which may be recovered against or incurred by the telegraph company on account of any errors, failures, delays, or other defaults or mishaps in the receipt, transmission, or delivery of messages, occasioned by the fault of persons employed by the railroad company, and acting as agents of the telegraph company, in the transaction of commercial or public telegraph business, the telegraph company agreeing to pay the remaining three-fourths (¾).

Fifteenth. If any monthly payment herein provided for be not made within sixty days after it shall have become due, and shall have been demanded by written notice, delivered, to the treasurer,
26 or an executive officer of the party in default, or if any other covenant herein made shall not, after sixty days' written notice of default and demand made by either party in the manner herein provided, be fulfilled by the other party, the contract may, at the option of the party demanding such fulfillment, be rescinded, and such rescission shall not relieve the party in default from liability for any amount due or for damages for non-fulfillment of such covenant or of any other covenant.

Sixteenth. If no new agreement be made by the parties hereto, the telegraph company shall at the termination of this contract, or at any time hereafter, upon receiving written notice from the railroad company, remove within six months from the receipt of said notice all of its poles and wires and leave the property of the railroad company in good condition and free from the encumbrance thereof to the satisfaction of the general manager, or other proper officer of the railroad company, and if not so removed the railroad company may remove them at the expense of the telegraph company: *Provided, however*, That the payment agreed to be made by the telegraph company to the railroad company in the sixth clause hereof, and by the railroad company in the eighth clause, shall not apply to the said six months, the companies respectively hereby expressly agreeing to waive the same.

Seventeenth. All and all manner of contracts, engagements, or arrangements whatsoever hitherto made between the said railroad company or any of the companies named in Schedule A hereto attached, or any company merged or consolidated with the companies therein named and the said telegraph company or any other company or companies, whose stock or lines may be owned or controlled by said telegraph company or made with other telegraph companies or individuals, and assigned and transferred to or owned or claimed by said telegraph company for or in respect to the right

of way over the railroads embraced in the schedule hereto attached, are hereby cancelled and declared to be void and of none effect as between the parties hereto and thereto, and all and all manner of claims arising thereout, whether in suit or otherwise, are hereby terminated and settled, and the parties mutually released therefrom, and the parties complainants in any such suits agree to discontinue the same, each party agreeing to pay its own costs. This not to release any money actually due by either party to the other for rent or services rendered under said contracts.

27 Any easement or right of way heretofore acquired by the telegraph company upon any of the roads embraced in this agreement, either directly by contract or by assignment of contracts or agreements made by other companies with the railroad company, or with any of the companies whose roads or property are embraced in the schedule hereto attached, is hereby relinquished and abandoned, and the rights and easements of the telegraph company upon the right of way of said railroad company shall be such only as are granted by this agreement, and shall cease with its termination.

Eighteenth. In case of any difference of opinion between the parties hereto in relation to any of the provisions of this agreement, the matter in dispute shall be referred to two arbitrators, one of whom shall be appointed by the railroad company and the other by the telegraph company, and if the two referees so chosen cannot agree, then the two so selected shall select a third like disinterested and competent party, and the decision of the said three referees, or a majority of them, shall be final and conclusive between the parties hereto; but if either of the parties hereto fail or refuse after ten days' written notice from the other to select a referee as aforesaid, then the party not in default shall select a referee as aforesaid for the party so failing or refusing to select, and the said two referees so selected if unable to agree shall select a third like referee, and the three so chosen, or a majority of them, shall proceed as hereinbefore mentioned, and the award of the said three referees, or a majority of them, shall be final and conclusive between the parties hereto.

In witness whereof, &c.

SCHEDULE A.

Philadelphia and Columbia railroad—West Philadelphia to Columbia, Pa.

Pennsylvania railroad—Harrisburg to Pittsburg, Pa.

Schuylkill River branch Pennsylvania railroad—Haverford street to Arsenal bridge.

Delaware extension Pennsylvania railroad—Arsenal bridge, West Philadelphia, to Dock Street depot.

Frazer branch—Frazer to near Woodland.

Columbia bridge—Over Susquehanna river at Columbia, Pa.

York branch—West end Columbia bridge to York, Pa.

Tyrone branch—Tyrone to junction Bald Eagle Valley railroad at Vail Station.

28 Hollidaysburg branch—Altoona to Hollidaysburg, with branch from Duncansville to Portage iron works.

Morrison's Cove branch—Hollidaysburg to Henrietta, Pa., with branch to Martinsburg.

Bloomfield branch—Roaring Spring to Ore Hill, Pa.

Williamsburg branch—Hollidaysburg to Williamsburg, Pa.

Springfield branch—Springfield Junction to Ore Mines.

Indiana branch—Blairsville Intersection to Indiana, Pa.

Port Perry branch—Pennsylvania railroad near Brinton's, to Pittsburg, Virginia and Charleston railroad at Thomson.

Hudson River ferries—New York city to Jersey City, across Hudson river.

New Jersey railroad—Hudson river, at Jersey City to point 3½ miles west of New Brunswick, N. J., with branches from Harsimus Junction to pier No. 3; East Newark to Market street, Newark, and Metuchen to Bonhampton.

Trenton branch Camden and Amboy railroad—3½ miles west of New Brunswick to east end of Trenton Delaware bridge, with branches from Princeton Junction to Princeton, and Monmouth Junction to Kingston.

Perth Amboy and Woodbridge railroad—Rahway to Perth Amboy, N. J.

Millstone and New Brunswick railroad—New Brunswick to East Millstone, N. J.

Rocky Hill and Kingston railroad—Kingston to Rocky Hill, N. J.

Camden and Amboy railroad, main line—Camden to South Amboy, with branches from Bordentown to Trenton, and Jamesburg to Monmouth Junction.

Pemberton and Hightstown railroad—Pemberton to Hightstown, N. J.

Burlington and Mt. Holly railroad—Burlington to Mt. Holly, N. J.

Mt. Holly, Lumberton and Medford railroad—Mt. Holly to Medford, N. J.

Camden and Burlington County railroad—Camden to Pemberton, N. J.

Vincentown branch of Burlington County railroad—Ewansville to Vincentown, N. J.

Belvidere Delaware railroad—Trenton to Manunka Chunk, with branch from Coalport to Millham.

Flemington railroad—Lamberville to Flemington, N. J.

29 Trenton Delaware bridge—Over Delaware river, from Trenton, N. J., to Morrisville, Pa.

Philadelphia and Trenton railroad—West end of Trenton Delaware bridge, at Morrisville, Pa., to Kensington Station, Philadelphia, with branch on Tioga street to Delaware river.

Frankford and Holmesburg railroad—Holmesburg Junction to Bustleton, Pa.

Connecting railway—Philadelphia and Trenton railroad at Frankford Junction, to Mantua Junction, on Pennsylvania railroad.
West Chester railroad—Near Woodland to West Chester, Pa.
East Brandywine and Waynesburg railroad—Downington to New Holland, Pa.
Pomeroy and State Line railroad—Pomeroy, Pa., to Philadelphia, Wilmington and Baltimore Railroad intersection, Del.
Hanover and York railroad—York to Hanover, Pa.
Littlestown railroad—Hanover, Pa., to Maryland State line, near Kingsdale.
Frederick and Pennsylvania Line railroad—State line, near Kingsdale, to Frederick, Md.
Harrisburg, Portsmouth, Mt. Joy and Lancaster railroad—Dillerville to Harrisburg, with branch from Middletown to Columbia, Pa.
Philadelphia and Erie railroad—Erie to Sunbury.
Sunbury, Hazelton and Wilkesbarre railroad—Sunbury to Tomhicken, Pa.
Mifflin and Centre County railroad—Lewistown Junction to Milroy, Pa.
Lewistown and Tuscarora bridge—Over Juniata river, at Lewistown, Pa.
Sunbury and Lewistown railway—Lewistown borough to Selinsgrove Junction, N. C. railway.
Bedford and Bridgeport railroad—Mt. Dallas, Pa., to Maryland State line, with branch on Dunnings creek.
Bald Eagle Valley railroad—Vail Station to Lock Haven, Pa.
Tryone and Clearfield railway—Vail Station to Curwensville, Pa., with branches to coal mines.
Lewisburg and Tryone railroad—Tryone to Pennsylvania Furnace and Montandon to Spring Mills.
30 Lewisburg bridge—Over Susquehanna river, at Lewisburg, Pa.
Newry railroad—Portage iron works to Newry, Pa.
Ebensburg and Cresson railroad—Cresson to Ebensburg, Pa.
South-west Pennsylvania railway—Junction, near Greensburg, to Fairchance, Pa., with branches to coal mines.
West Pennsylvania railroad—Blairsville to Allegheny City, with branch to Butler, Pa.
Pittsburg, Virginia and Charleston railway—South Side, Pittsburg, to Bell Vernon.
Freehold and Jamesburg Agricultural railroad—Jamesburg to Sea Girt, N. J.
Pemberton and Sea Shore railroad—Pemberton Junction to Whiting's N. J.
Columbus, Kinkora and Springfield railroad—Kinkora to New Lisbon, N. J.
Florence Branch railroad—Florence, N. J., to Wood's iron works.
Camden and Philadelphia steamboat ferry—Camden, N. J., to Philadelphia.

West Jersey railroad—Camden to Cape May, N. J., with branch from Glassboro to Bridgeton.
West Jersey and Atlantic railroad—Newfield to Atlantic City.
Swedesboro railroad—Woodbury to Swedesboro, N. J.
Salem railroad—Elmer to Salem, N. J.
Columbia and Port Deposit railroad—Columbia, Pa., to Port Deposit, Md.
Cumberland Valley railroad—Harrisburg to Potomac river, at Powell's Bend, Md.
Dillsburg and Mechanicsburg railroad—Mechanicsburg to Dillsburg, Pa.
Mont Alto railroad—Junction near Chambersburg, to Waynesboro, Pa.
Southern Pennsylvania railroad—Junction near Marion, to Richmond, Pa.
Martinsburg and Potomac railroad—Potomac river, at Powell's Bend, to Martinsburg, W. Va.
Northern Central railway—Baltimore, Md., to Sunbury, Pa., with branches to Green Spring and Canton, Md.
Elmira, Jefferson and Canandaigua railroad—Watkins to Canandaigua, N. Y.
Chemung railroad—Horse Heads Junction, Erie railway, to Watkins, N. Y.
31 Elmira and Williamsport railroad—Williamsport, Pa., to junction with Erie railway, near Elmira, N. Y.
Shamokin Valley and Pottsville railroad—Sunbury to Mt. Carmel, Pa., with branch to Hickory Ridge colliery.
Summit Branch railroad—Millersburg to Williamstown, Pa.
Baltimore and Potomac railroad—Baltimore, Md., to south end Long bridge, Washington, D. C., with branch from Bowie to Pope's creek.
Alexandria and Washington railroad—South end Long bridge to Alexandria, Va.
Alexandria and Fredericksburg railroad—South end Long bridge to Quantico, Va.
Bellefonte and Snow Shoe branch—Milesburg to Bellefonte, Pa.
Allegheny Valley railroad—Pittsburg to Oil City, and Red Bank to Driftwood, with branches.

EXHIBIT 2.

Western Union Telegraph Company; treasurer's office, Broadway and Dey street.

NEW YORK, *Oct.* 21, 1901.

R. W. Downing, comptroller, Phila., Pa.

DEAR SIR: I enclose herewith check to your order, on National Bank of Commerce, for $6250. Payment due October 21, 1901.
Please sign and return enclosed voucher.

Yours truly, M. T. WILBUR, *Treasurer.*

EXHIBIT 3.

The Western Union Telegraph Company to Pennsylvania R. R. Co., Dr.

Payment due Oct. 21, 1901, as per contract..... $6250 —

6250 —

32 Received of treasurer W. U. Teleg'h Co., subject to the notice upon the back of this voucher sixty-two hundred and fifty dollars in full of the above account.

Oct. 22d, 1901.

PENNSYLVANIA RAIL ROAD COMPANY.

(Sig'd) H. P. CONNER, *Ass't Treas.*

Form No. 10. Approved: —— —— supt.
Paid Oct. 21, 1901, by M. T. Wilbur, treasurer.
No. —. Correct. H. C. L.

NOTICE.—The party signing this voucher is notified to see that payment is received before or at the time of signing. If this voucher is signed without payment, it is done at signer's own risk, and the company will not be responsible for any claim for payment thereafter.

EXHIBIT 4.

Western Union Telegraph Company; treasurer's office, Broadway and Dey street.

NEW YORK, *Nov.* 20, 1901.

R. W. Downing, compt., Philada., Pa.

DEAR SIR: I enclose herewith check to your order, on National Bank of Commerce, for $6250. Payment due Nov. 20, '01.

Please sign and return enclosed voucher.

Yours truly, M. T. WILBUR, *Treasurer.*

EXHIBIT 5.

The Western Union Telegraph Company to Pennsylvania Railroad Co., Dr.

Payment due Nov. 20, 1901, as per contract..... $6250—

$6250—

Received of treasurer W. U. Teleg'h Co., subject to the notice upon

the back of this voucher, sixty-two hundred & fifty dollars in full of the above account.

Nov. 21, 1901.

PENNSYLVANIA RAILROAD COMPANY.

(Sig'd) H. P. CONNOR, *Ass't Treas.*

33 Form No. 10. Approved: —— ——, supt.
Paid Nov. 20 1901 by M. T. Wilbur treasurer.
No. —. Correct. H. C. L.

NOTICE.—The party signing this voucher is notified to see that payment is received before or at the time of signing. If this voucher is signed without payment, it is done at signer's own risk, and the company will not be responsible for any claim for payment thereafter.

EXHIBIT 6.

Western Union Telegraph Company; treasurer's office, Broadway and Dey street.

NEW YORK, *Dec.* 20, 1901.

R. W. Downing, comptroller, Phila., Pa.

DEAR SIR: I enclose herewith check to your order, on National Bank of Commerce, for $6250. Payment due Dec. 20 1901 (Pennsylvania R. R. Co.)

Please sign and return enclosed voucher.

Yours truly, M. T. WILBUR, *Treasurer.*

EXHIBIT 7.

The Western Union Telegraph Company to Pennsylvania R. R. Co., Dr.

Payment due Dec. 20, 1901 as per contract..... $6250 —

$6250 —

Received of treasurer W. U. Teleg'h Co., subject to the notice upon the back of this voucher, sixty-two hundred & fifty dollars in full of the above account.

Dec. 21, 1901.

PENNSYLVANIA RAIL ROAD CO.

(Signed) H. P. CONNER, *Ass't Treas.*

34 Form No. 10. Approved: —— —— supt.
Paid Dec. 20, 1901 by M. T. Wilbur treasurer.
No. —. Correct. H. C L.

NOTICE.—The party signing this voucher is notified to see that payment is received before or at the time of signing. If this voucher is signed without payment, it is done at signer's own risk, and the company will not be responsible for any claim for payment thereafter.

EXHIBIT 8.

Western Union Telegraph Company; treasurer's office, Broadway and Dey street.

NEW YORK, *Jan.* 20, 1902.

Pennsylvania R. R. Co., Philadelphia, Pa.

DEAR SIR: I enclose herewith check to your order, on National Bank of Commerce, for $6250.—Payment due as per contract.

Please sign and return enclosed voucher.

Yours truly, M. T. WILBUR, *Treasurer.*

EXHIBIT 9.

The Western Union Telegraph Company to Pennsylvania R. R. Co., Dr.,

Payment due January 20, 1902 as per contract.....	$6250 —
	6250 —

Received of treasurer W. U. Tel·g'h Co., subject to the notice upon the back of this voucher sixty-two hundred & fifty dollars in full of the above account.

Jan. 21, 1902

PENNSYLVANIA RAIL ROAD COMPANY.

(Signed) H. P. CONNER, *Ass't. Treas.*

Form No. 10. Approved: —— ——, supt.
Paid Jan. 20 1902 by M. T. Wilbur, treasurer.
No. —
Correct. H. C. L.

35 NOTICE.—The party signing this voucher is notified to see that payment is received before or at the time of signing. If this voucher is signed without payment, it is done at signer's own risk and the company will not be responsible for any claim for payment thereafter.

EXHIBIT 10.

Western Union Telegraph Company; treasurer's office, Broadway and Dey street.

NEW YORK, *Feb.* 20, 1902.

Pennsylvania R. R. Co., Philadelphia, Pa.

DEAR SIR: I enclose herewith check to your order, on National Bank of Commerce, for $6250. Payment due Feb. 20 1902 as per contract.

Please sign and return enclosed voucher.

Yours truly, M. T. WILBUR, *Treasurer.*

EXHIBIT 11.

The Western Union Telegraph Company to Pennsylvania R. R. Co., Dr.

Payment due February 20 1902 as per contract..... $6250 —

$6250 —

Received of treasurer W. U. Teleg'h Co., subject to the notice upon the back of this voucher — dollars in full of the above account.

Feb'y 21, 1902.

PENNSYLVANIA RAIL ROAD COMPANY.

(Signed) H. P. CONNER, *Ass't Treas'r.*

Form No. 10. Approved: —— ——, supt.

Paid Feb. 20, 1902 by M. T. Wilbur, treasurer.

No. —. Correct. H. C. L.

NOTICE.—The party signing this voucher is notified to see that payment is received before or at the time of signing. If this
36 voucher is signed without payment, it is done at signer's own risk, and the company will not be responsible for any claim for payment thereafter.

EXHIBIT 12.

Western Union Telegraph Company; treasurer's office, Broadway and Dey street.

NEW YORK, *March* 20, 1902.

Mr. R. W. Downing, comptroller Penna. R. R. Co., Phila., Pa.

DEAR SIR: I enclose herewith check to your order, on National Bank of Commerce, for $6250. Payment due March 20, 1902 as per contract.

Please sign and return enclosed voucher.

Yours truly, M. T. WILBUR, *Treasurer.*

EXHIBIT 13.

The Western Union Telegraph Company to Pennsylvania R. R. Co., Dr.

Payment due March 20 1902 as per contract..... $6250 —

$6250 —

Received of treasurer W. U. Teleg'h Co., subject to the notice upon the back of this voucher — dollars in full of the above account.
March 21 1902

PENNSYLVANIA RAILROAD COMPANY.
(Signed) H. P. CONNOR, *Ass't Treas'r.*

Form No. 10. Approved —— ——, supt.
Paid Mar. 20/1902 by M. T. Wilbur, treasurer.
No. — Correct. H. C. L.

NOTICE.—The party signing this voucher is notified to see that payment is received before or at the time of signing. If this
37 voucher is signed without payment, it is done at signer's own risk, and the company will not be responsible for any claim for payment thereafter.

EXHIBIT 14.

Western Union Telegraph Company; treasurer's office, Broadway and Dey street.

NEW YORK, *Ap'l* 21, 1902.

Mr. R. W. Downing, compt. Penna. R. R. *R.* Co., Phila., Pa.

DEAR SIR: I enclose herewith check to your order on National Bank of Commerce for $6250. Payment due April 20th, '02 as per contract.
Please sign and return enclosed voucher.
Yours truly, M. T. WILBUR, *Treasurer.*

EXHIBIT 15.

The Western Union Telegraph Company to Pennsylvania R. R. Co., Dr.

Payment due April 20th 1902 as per contract..... $6250 —

$6250 —

Received of treasurer W. U. Teleg'h Co., subject to the notice upon

the back of this voucher sixty two hundred & fifty dollars in full of the above account.

April 22 1902.

PENNSYLVANIA RAIL ROAD CO.
(Sig'd) H. P. CONNER, *Ass't Treas'r.*

Form No. 10. Approved: —— ——, supt.
Paid April 21, 1902 by M. T. Wilbur, treasurer.
No. —. Correct. H. C. L.

NOTICE.—The party signing this voucher is notified to see that payment is received before or at the time of signing. If this
38 voucher is signed without payment, it is done at signer's own risk, and the company will not be responsible for any claim for payment thereafter.

EXHIBIT 16.

Western Union Telegraph Company; treasurer's office, Broadway and Dey street.

NEW YORK, *May* 20, 1902.

Mr. R. W. Downing, compt. Penna. R. R. *R.* Co., Phila., Pa.

DEAR SIR: I enclose herewith check to your order, on National Bank of Commerce for $6250. Payment due May 20, 1902 as per contract.

Please sign and return enclosed voucher.

Yours truly, M. T. WILBUR, *Treasurer.*

EXHIBIT 17.

The Western Union Telegraph Company to Pennsylvania R. R. Co., Dr.

Payment due May 20 1902 as per contract..... $6250—

$6250—

Received of treasurer W. U. Teleg'h Co., subject to the notice upon the back of this voucher sixty-two hundred & fifty dollars in full of the above account.

May 21, 1902.

PENNSYLVANIA RAIL ROAD COMPANY.
(Signed) H. P. CONNER, *Ass't Treas'r.*

Form No. 10. Approved: —— ——, supt.
Paid May 20 1902 by M. T. Wilbur treasurer.
No. —. Correct. H. C. L.

NOTICE.—The party signing this voucher is notified to see that payment is received before or at the time of signing. If this voucher is signed without payment, it is done at signer's own risk, and the company will not be responsible for any claim for payment thereafter.

39 EXHIBIT 18.

Western Union Telegraph Company; treasurer's office, Broadway and Dey street.

NEW YORK, *June* 20, 1902.

Mr. R. W. Downing, compt. Penn. R. R. Co., Phila., Pa.

DEAR SIR: I enclose herewith check to your order, on National Bank of Commerce for $6250. Payment due June 20, 1902 as per contract.

Please sign and return enclosed voucher.

Yours truly, M. T. WILBUR, *Treasurer.*

EXHIBIT 19.

The Western Union Telegraph Company to Pennsylvania R. R. Co., Dr.

Payment due June 20 1902 as per contract..... 6250 —

6250 —

Received of — W. U. Teleg'h Co., subject to the notice upon the back of this voucher — dollars in full of the above account.

June 21 1902

THE PENNSYLVANIA RAILROAD COMPANY.

(Sig'd) H. P. CONNER, *Ass't Treas'r.*

Form No. 10. Approved: —— ——, supt.
Paid Jan. 20 1902 by M. T. Wilbur, treasurer.
No. —. Correct. H. C. L.

NOTICE.—The party signing this voucher is notified to see that payment is received before or at the time of signing. If this voucher is signed without payment, il is done at signer's own risk, and the company will not be responsible for any claim for payment thereafter.

40 EXHIBIT 20.

Pennsylvania Railroad Company.

PHILADELPHIA, 15*th May*, 1902.

Mr. Robert C. Clowry, pres't Western Union Tel. Co., New York city.

MY DEAR SIR: In pursuance of action taken by the board of directors of this company on 14th, May, 1902, I send the enclosed notice.

Kindly acknowledge receipt, and oblige,

Very truly yours,

(Signed) LEWIS NEILSON, *Secretary.*

To the Western Union Telegraph Company:

You are hereby notified to remove within six (6) months from the 1st day of June, 1902, all of your poles, wires, and property from the right-of-way and property of this company and of the other companies named in a certain agreement between this company and you dated the twentieth day of September, anno Domini 1881, (a copy whereof is hereto attached), or named in any addition or additions, supplement or supplements, written or verbal, to said contract, and to leave the property of this company and of the other companies referred to in good condition and free from the encumbrance of your said poles, wires, and other property, to the satisfaction of the general manager of this company. And you are also notified that if not so removed and such property left in said good condition by you, this company will, at your expense, cause your said poles, wires and other property occupying the right-of-way or property of this and the other companies referred to, to be removed and said property left in good condition free from the encumbrance of the said wires, poles, and other property, to the satisfaction of the general manager of this company.

In witness whereof, the said The Pennsylvania Railroad Company has caused its corporate seal to be hereunto affixed, duly attested by the signature of its proper officers, this fourteenth day of May, anno Domini, 1902.

THE PENNSYLVANIA RAILROAD COMPANY,

(Signed) By A. J. CASSATT, *President.*

Attest:

[SEAL.] (Signed) LEWIS NEILSON, *Secretary.*

41 EXHIBIT 21.

Western Union Telegraph Company,

NEW YORK, *May 20th*, 1902.

A. J. Cassatt, Esq., pres't Penna. R. R. Co., Philadelphia, Pa.

DEAR SIR: I am in receipt of a letter from Lewis Neilson, secretary, dated May 15th, in relation to the termination of the contract between the Pennsylvania Railroad Company and the Western Union Telegraph Company, dated September 20th, 1881; also a letter from A. J. County, assistant secretary, in relation to the termination of contracts of the Philadelphia, Wilmington and Baltimore Railroad Company; the Delaware Railroad Company; the Delaware, Maryland and Virginia Railroad Company; the Junction Railroad Company, and the Philadelphia and Baltimore Central Railroad Company, respectively, with the Western Union Telegraph Company.

I understand that for some time prior to my election as president of this company, in March last, negotiations had been in progress between the officers of our respective companies for a renewal of these contracts on terms satisfactory to both parties; and Vice-President Clark has recently turned over to me a draft of proposed new agreement in connection with which I believe we have been awaiting some figures from your company. I shall be glad to take up the matter actively, either here or at Philadelphia, at your convenience.

Yours truly,
(Signed) R. C. CLOWRY,
Pres't & Gen. Mgr.

EXHIBIT 22.

Pennsylvania Railroad Company.

PHILADELPHIA, *May 21st*, 1902.

Mr. R. C. Clowry, pres't & gen. mgr. Western Union Tel. Co., N. Y. city.

DEAR SIR: In reply to your favor of the 20th instant, I beg to say that none of the companies named in your letter desires to renew or extend its contract with the Western Union Telegraph Co. As you are aware, the contract between the Western Union Telegraph Co. and the Pennsylvania R. R. Co. terminated, under its terms, on the 20th of September, 1901, and the notices to which you
42 refer, for the removal of the poles within six months, were given in accordance with a provision of the contract. If your company desires to discuss any temporary arrangements which

may be necessary during the time allowed for the removal of your poles, we shall be glad to take up those matters with you at your convenience.

Yours truly,

(Signed) A. J. CASSATT, *Pres't.*

EXHIBIT 23.

Western Union Telegraph Company, president's office.

NEW YORK, *June* 26, 1902.

A. J. Cassatt, Esq., president, etc., Philadelphia, Pa.

DEAR SIR: I have your favor of May 21st in which you state that none of the companies named in my letter of the 20th desires to renew or extend its contract with the Western Union Telegraph Company, and that the contract between the Western Union Telegraph Company and the Pennsylvania Railroad Company terminated under its terms on the 20th of September, 1901, and that the notices which were referred to for the removal of the poles within six months were given in accordance with a provision of the contract and that if my company desires to discuss any temporary arrangements which may be necessary during the time allowed for the removal of its poles you will be glad to take up those matters with me at my convenience.

Replying thereto, I have to state that this company will be glad to have a conference with your company with a view of adjusting amicably any and all differences that may be found to exist between them, thus avoiding litigation and any possible interference with the duties which this company owes to the Government and the public. I request and urge that you fix a time and place for such a conference, which seems to be the more necessary because your letter appears to be based on a material misunderstanding of the facts in relation to the termination of the contracts and the rights of this company, since some of the contracts referred to in your letter are perpetual in their terms, or run during the life of the parties, and, therefore, cannot be terminated by one party without the consent of the other. As bearing on the subject, I enclose a copy of a letter which I sent and delivered yesterday to the
43 Postal Telegraph-Cable Company; also copies of two letters, dated June 24th, to James McCrea, Esq., vice-president, Pittsburg, Pa., which letters were sent only after a careful examination of the contracts and the legal rights of the parties by our counsel.

It seems proper to add that such a conference as we ask ought to be had before your company concludes any arrangement adverse to this company which would necessitate litigation by this company to enforce its rights. Under the contracts by which the lines of this company on the roads mentioned in your letter of May 21st were

brought into existence, the laws of Congress and the constitution and laws of Pennsylvania, this company is advised that it is entitled to maintain and operate its lines of telegraph on the said railroads, subject, only, at most, to make a fair and reasonable compensation to the railway companies for this right, and this company is willing and hereby offers to make such compensation. If your company declines further to contract with this company, I respectfully request a meeting for the purpose of agreeing upon the amount of such compensation, and, if no such agreement can be made, that the matter be submitted to arbitration, your company selecting one arbitrator and this company another, and the two arbitrators thus selected to choose a third, or to have the amount of such compensation determined in any other equitable manner. I shall appreciate an answer at your early convenience, and I venture to express the wish that, in view of the large public and private interests which we represent, that you will meet this company in its earnest endeavor to avoid unnecessary and wasteful litigation.

Very truly yours,

(Signed) R. C. CLOWRY, *President.*

3 inclosures.

EXHIBIT 24.

The Pennsylvania Railroad Company.

PHILADELPHIA, *July 5th*, 1902.

Mr. R. C. Clowry, president and general manager, Western Union Telegraph Company.

DEAR SIR: I beg to acknowledge receipt of yours of the 26th ultimo.

In my letter of the 21st of May I suggested a conference
44 which I thought you might possibly desire to have for the purpose of making any temporary arrangements you might find necessary under the notice which has been given to your company. This conference I infer you do not care to have.

A conference concerning the matters you suggest would be useless as your company asserts rights upon the lines of railroad of the companies I represent which they cannot concede.

Noting your reference to the Postal Telegraph-Cable Company, I beg to advise you that a contract has been concluded with that company covering the railroads included in the contract which terminated on September 20th last, under the terms of which the Postal Telegraph-Cable Company will at once begin to transact a commercial telegraph business at the stations of the railroad companies, and while the right of your company to do business at such stations has ceased, yet, as we are desirous of causing you as little inconvenience as possible, we will permit our operators to continue to receive and

transmit such messages as the public may desire to send by your lines until September 30th next; the operators to be considered as acting as your agents in that respect and you to account to the railroad companies for their compensation on a basis equal to that fixed by the former contract.

To avoid unnecessary loss to your company incident to the removal of your poles and wires, we are willing to purchase, at a fair valuation, such of the lines as we can make use of, and if you desire to take up this question, Mr. Charles M. Sheaffer, superintendent of telegraph, will hold himself in readiness to meet a representative of your company to agree upon the price of such lines.

Yours truly,

(Signed) A. J. CASSATT, *President.*

EXHIBIT No. 25.

(Ten cent revenue stamp.)

POST OFFICE DEPARTMENT,
WASHINGTON, D. C., *Feb'y 17th*, 1899.

I, Perry S. Heath, acting Postmaster-General of the United States of America, certify that the annexed is a true copy of the original acceptance on file in this department:

45 In testimony whereof, I have hereto set my hand and caused the seal of the Post Office Department to be affixed, at the city of Washington the day and year above written.

PERRY S. HEATH,
Acting Postmaster General.

[SEAL.] B. W. T.

Annexed to the foregoing is the following, to wit:

Western Union Telegraph Company.

Meeting of the board of directors at the executive office, 145 Broadway, New York.

JUNE 5TH, 1867.

Resolved that this company does hereby accept the provisions of the act of Congress, entitled "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military and other purposes," approved July 24, 1866, with all the powers, privileges, restrictions and obligations conferred and required thereby; and that the secretary be and is hereby authorized and directed to file this resolution with the Postmaster General of the United States, duly attested by the signature

of the acting president of the company, and the seal of the corporation in compliance with the fourth section of said act of Congress.

Adopted unanimously.

HIRAM SIBLEY,
Acting President of Western Union Telegraph Company.
O. H. PALMER,
Sec'y. W. U. Tel. Co.

[Seal Western Union Telegraph Co.]

Filed June 8th, 1867,
JOS. H. BLACKFAN, *Chief Clerk.*

46 EXHIBIT 26.

In the United States Circuit Court for the District of New Jersey.

THE WESTERN UNION TELEGRAPH COMPANY, Plaintiff,
against
THE PENNSYLVANIA RAILROAD COMPANY and THE UNITED New Jersey Railroad and Canal Company, Defendants. } Petition.

The Western Union Telegraph Company, by its attorney, comes and represents:

(1.) That it is a telegraph company, a corporation duly organized under the laws of the State of New York relating to telegraph companies and a citizen and resident of the State of New York, having its principal place of business in the southern district of said State, and is and for many years last past has been doing business within the State of New York, the State of New Jersey, and the other States and Territories of the United States, and within the Dominion of Canada, as a telegraph company.

(2.) That the defendant, The Pennsylvania Railroad Company is a corporation duly organized under the laws of the State of Pennsylvania and is a citizen and resident of the State of Pennsylvania, having its principal place of business in the city of Philadelphia; that the defendant The United New Jersey Railroad and Canal Company is a corporation duly organized under the laws of the State of New Jersey and is a citizen and resident of said State.

(3.) That the matters in controversy in this suit exceed the value of two thousand dollars, exclusive of interest and costs and are wholly between citizens of different States and arise under the Constitution and laws of the United States and in which the Western Union Telegraph Company claims privileges and rights under acts of Congress and the Constitution and laws of the United States.

(4.) The Western Union Telegraph Company further says that it was organized as a telegraph company as aforesaid in the year 1851, and thereupon and thereafter began the work of the
47 construction and operation of telegraph lines in the State of New York and elsewhere, and since said time has been con-

tinuously engaged in the work of construction and operation of telegraph lines for the rapid dissemination of intelligence, and has extended its lines as a continuous system into and through the State of New Jersey, and through all the States and Territories of the United States, and through the Dominion of Canada; and that its lines connect with ocean cables leading to Central and South American and foreign countries, through and over which system of lines it transmits upwards of 65,000,000 messages yearly for the public and for the Government of the United States, exclusive of railroad messages, messages relating exclusively to its own business, and messages transmitted over wires leased by it to private parties; that at the present time said system of telegraph lines under its operation and control, comprises over 192,000 miles of poles and cables and over 900,000 miles of wire; and its capital stock is distributed among over 11,000 stockholders. That the lines of telegraph in the system above described have been in operation for many years past and are relied upon by the public and by the Government of the United States and by the governments of foreign countries as a means of quick transmission of intelligence to and from all parts of the United States and to and from foreign countries.

(5.) That the Congress of the United States duly passed an act, approved July 24, 1866, entitled "An act to aid in the construction of telegraph lines and to secure to the Government the use of the same for postal, military and other purposes;" and that the Western Union Telegraph Company, on or about the 8th day of June, 1867, duly accepted the provisions of said act by filing with the Postmaster-General of the United States in writing the acceptance by said company of all the restrictions and obligations of the said act of Congress, and thereby and thereafter continuously became, and has been and still is, entitled to all the privileges and rights granted by the said act of Congress to telegraph companies, thus accepting the benefits, restrictions and obligations of said act, and the said telegraph company has, at all times, complied with the provisions of said act and has rendered to the various departments and officers of the Government of the United States all the duties and services required by said act, giving to the said Government of the United States priority over all other business, and at rates fixed by the Postmaster-General, which rates, as thus fixed by him, have been very much lower than the reasonable rates charged for similar services rendered to the general public.

48 A duly exemplified copy of the plaintiff's said acceptance of the said act of July 24, 1866, is hereto attached as part of this petition, marked *Exhibit No.* 1.

(6.) That by act of Congress, approved June 8, 1872, all railroads or parts of railroads which then or thereafter might be in operation, were declared to be established post-roads, and by a further act of Congress, approved March 1, 1884, all public roads and highways, while kept up and maintained as such, were declared to be post-roads; and by the provisions of said act of Congress, approved July 24, 1866, there was granted to any telegraph company then organ-

ized, or which might thereafter be organized under the laws of any State, and which accepted in writing the provisions of said act, the right to construct, maintain and operate telegraph lines through and over any portion of the public domain and over and along any of the military or post-roads of the United States which then were or might thereafter be declared such by law, subject to the condition only that such lines of telegraph should be so constructed and maintained as not to obstruct the navigation of streams or waters over, under or across which the same should be laid, or interfere with the ordinary travel on such military or post-roads.

(7.) That the said acts of Congress apply to the railroads of the defendants herein mentioned and described, and the said railroads are post roads of the United States duly established by act of Congress in that behalf provided, and also public roads and highways under said acts of Congress and the laws of the State of New Jersey relating to said railroads. That the plaintiff, The Western Union Telegraph Company, having duly filed its written acceptance with the Postmaster-General of the restrictions and obligations of the said act of July 24, 1866, and fully complied with all the requirements of said acts of Congress, above mentioned, and of law, has the right to construct, maintain and operate lines of telegraph over and along the railroads of the defendants herein mentioned and described so as not to interfere with the ordinary travel thereon, and the plaintiff is ready and willing to make to the defendants, and each of them, a just compensation for such use by the plaintiff of the roadway or right of way of the defendant companies for the plaintiff's telegraph lines over and along the said railroads of the defendants.

(8.) That the said grant by the United States in and by the aforesaid acts of Congress of the right to construct, operate and maintain the telegraph lines of the plaintiff on the railroads of
49 the defendants was a grant made upon a full, valuable and continuing consideration paid and rendered by the plaintiff to the United States, which consideration was the agreement of the plaintiff evidenced by the plaintiff's written acceptance of the act of July 24, 1866, duly filed on June 8, 1867, with the Postmaster General, of the restrictions and obligations of the said act, and the performance by the plaintiff of all of the duties and obligations created and required by said acts of Congress. That the plaintiff has since said acceptance of said act performed all its obligations required by said acts and by law, and the plaintiff has ever since the date of filing of said acceptance given, and is still giving, to the United States, and to the several departments of the Government, and their officers, priority over all other business in the transmission of telegrams on the lines of the plaintiff company, situated over and along the railroads of the defendants, at rates annually fixed by the Postmaster General, which rates are far less than the rates charged, paid and received by the plaintiff for the same kind of services from the public, and greatly less than the reasonable value of the said services rendered to the Government. The plaintiff has accepted, among others, the provisions of the said act of Congress of

July 24, 1866, giving to the United States the right to purchase all of its telegraph lines and effects at an appraised value to be ascertained by five competent disinterested persons as provided by the said act of Congress. The plaintiff states that by reason of the premises, its acceptance of the said act of Congress, the construction and maintenance of its telegraph lines thereunder, and the continued performance by the plaintiff of the provisions of the said acts of Congress, the right granted by the said act of July 24, 1866, to the plaintiff to construct, maintain and operate its lines of telegraph over and along the railroads of the said defendants became vested, and the said grant is in full force and effect, and the plaintiff avers that its rights to construct, maintain and operate its said lines of telegraph over and along the railroads, and right of way of the defendant companies is complete, the plaintiff being under an obligation or liability only to make fair and reasonable compensation to the defendants for the use of the said right of way or railways of the defendants by the plaintiff in the manner and under the restrictions of the said acts of Congress.

(9.) That the defendant, the United New Jersey Railroad and Canal Company, is the owner of lines of railways extending from Jersey City in the State of New Jersey to the Delaware river at the city of Trenton in said State, with the following branches:

50 One extending from Princeton Junction in the county of Mercer to the borough of Princeton in said county.

One extending from the city of Rahway in the county of Union to the city of Perth Amboy in the county of Middlesex.

One extending from South Amboy in the county of Middlesex to the city of Camden in the county of Camden.

One extending from the main line in the town of Harrison, Hudson county, to Centre street, Newark, Essex county.

One extending from Monmouth Junction, Middlesex county, to the southerly terminus of the Rocky Hill railroad, near Kingston, Somerset county.

One extending from Millham Junction on the main line in Hamilton township in connection with Belvidere connection in Trenton City.

One extending from junction with Belvidere connection and Belvidere Delaware R. R. in Trenton City to connection with Bordentown branch.

One extending from junction with the main line in connection with Belvidere and Delaware railroad and Bordentown connection.

One extending from the main line at Monmouth Junction to Jamesburg, Middlesex county.

One extending from Camden & Amboy division at Bordentown Burlington county, to Trenton, Mercer county.

One extending from the main line at Florence to Delaware river Florence Foundry Burlington county.

That all said railways are within the State of New Jersey and within the jurisdiction of this court in this district; that at many points said lines of railway are constructed and maintained over

and along the public streets, roads and highways in cities and villages and over and along public highways in the country and within the limits of said streets, roads and highways; that The Pennsylvania Railroad Company, defendant herein, is in possession, control and operation of the said lines of railway under a lease from the said United New Jersey Railroad & Canal Company for a period of 999 years, from the first day of July, 1871.

That the railroads of the United New Jersey Railroad and Canal Company hereinbefore described were authorized and constructed and are now maintained, operated and controlled under and by virtue of certain acts of the legislature of the State of New Jersey, as follows:

(1.) An act entitled "An act to incorporate the Delaware and Raritan Canal Company," passed February 4, 1830.

51 (2.) An act entitled "An act to incorporate the Camden and Amboy Railroad and Transportation Company," passed February 4, 1830.

(3.) An act entitled "An act to incorporate 'The New Jersey Rail Road and Transportation Company,'" passed March 7, 1832.

(4.) An act entitled "An act relative to the Delaware and Raritan Canal and the Camden and Amboy Railroad and Transportation Companies," passed February 15, 1831.

(5.) An act entitled "A further supplement to the act entitled 'An act relative to the Delaware and Raritan Canal and the Camden and Amboy Railroad and Transportation Companies,'" passed March 15, 1837.

(6.) An act entitled "An act to validate and confirm certain agreements between the companies owning the railroad lines between New York and Philadelphia," approved February 27, 1867.

(7.) An act entitled "An act to enable the United Railway and Canal Companies to consolidate their stock and to consolidate or connect with other companies," approved March 17, 1870.

(8.) An act entitled "An act to amend an act entitled 'An act to validate and confirm certain agreements between the companies owning the railroad lines between New York and Philadelphia,'" approved March 14, 1872.

(9.) An act entitled "An act to validate and confirm a certain lease and contract between the companies now known as 'The United New Jersey Railroad and Canal Company' and 'The Pennsylvania Railroad Company,'" approved March 27, 1873.

That in and by said last mentioned acts and the several supplements thereto, and acts amendatory thereof, and the general public laws of the State of New Jersey, the said several railroads of the said defendants hereinbefore described, were created and made and now are public highways, and as such subject to occupation and use by telegraph companies under the provisions and conditions of the act of Congress of July 24, 1866, as herein fully set forth.

(10.) That for more than forty years last past there has been maintained and operated over and along the right of way of the said railroads hereinbefore described a line of telegraph owned,

maintained and operated by the Western Union Telegraph Company, or its predecessors in title or estate or right, which has thus been maintained and operated with the consent of the de-
52 fendants, The Pennsylvania Railroad Company, The United New Jersey Railroad & Canal Company or their predecessors in title, and which has been and is now so located, maintained and operated as not to interfere with the ordinary operation and management of the said railways or the ordinary travel thereon; that the Western Union Telegraph Company is in possession and control of the said telegraph lines and the same have been and still are connected with its system of telegraph in other States, Territories and foreign countries and have been continuously operated by it as a means for the transmission of intelligence for the public and for the Government of the United States and over the same are daily sent many thousands of messages to and from its main office in the city of New York and to and from the various States and Territories of the United States and foreign countries; that the said telegraph lines have been thus maintained and operated by the Western Union Telegraph Company for the 20 years last past with the consent of the Pennsylvania Railroad Company.

(8.) That said Pennsylvania Railroad Company has recently, to wit May 15th, 1902, notified the Western Union Telegraph Company to remove its poles and wires, and has withdrawn its consent to plaintiff to longer occupy its premises; that thereupon the said Western Union Telegraph Company duly made application to the said Pennsylvania Railroad Company to have ascertained and determined the amount of compensation to which said Pennsylvania Railroad Company would be entitled for the continued maintenance and operation of the said lines of telegraph over and along the said railways of the defendants under and subject to the terms, conditions and restrictions of the said act of Congress of July 24, 1866; but said railroad company refused and declined to treat with the Western Union Telegraph Company or to agree or attempt to agree upon the amount of compensation for the construction, maintenance and operation of said telegraph lines or any of them over and along the said railways; on the contrary the said defendant railroad companies deny that the said acts of Congress confer upon the Western Union Telegraph Company any right to construct, maintain or operate its telegraph lines over and along said railways.

The Western Union Telegraph Company further says that the said lines of telegraph can continue to be located, maintained, and operated without interference with the ordinary travel on the said railroad or the ordinary use, management, and operation of the said railway and that the plaintiff seeks to construct, maintain
53 and operate its lines of telegraph along said lines of railway subject to the conditions named in said act of Congress of July 24, 1866, that such lines of telegraph should be so constructed and maintained and operated as not to interfere with the ordinary travel on the said railroad, and subject also to the condition that when in the future, the location, maintenance and operation of its

said lines should be found to interfere with the ordinary travel upon and use of said railways, to make such reasonable changes in the location, maintenance and operation of said parts of said lines of telegraph as that the ordinary travel upon said railways should be and remain uninterfered with by such lines of telegraph, as provided in the said act of Congress of July 24, 1866.

(12.) That the plaintiff, on June 8, 1867, duly accepted as aforesaid the said act of July 24, 1866, and acting thereon immediately entered upon the performance of and has ever since continued to perform all of its duties and obligations thereunder to the United States and the public, and the plaintiff was in possession and enjoyment of its telegraph lines over and along said defendants' railroads herein mentioned and described and of the rights granted and conferred upon it by said act of July 24, 1866, long before and at the time the Pennslyvania Railroad Company became the lessee of said railroads or acquired any interest therein or use or control thereof, of all of which the defendants then and there had notice; and the plaintiff is advised and now avers that the rights of the defendants in said railroads are subject to the rights of the plaintiffs under said acts of Congress and the laws of New Jersey and in particular the plaintiff avers that the said lease of said railroads to The Pennsylvania Railroad Company, defendant herein, and any rights acquired by said Pennsylvania Railroad Company in or to said railroads or the use, possession or control thereof are subject to the rights of the plaintiff granted and conferred upon it by the said act of Congress of July 24, 1866, and acquired by the plaintiff by its acceptance of said act and its performance of all of the obligations and requirements of said acts of Congress.

(13.) The Western Union Telegraph Company further represents that it is necessary for the continued maintenance and operation of its said lines of telegraph, that it shall enjoy the right to set poles and the right to maintain poles set along the right of way of the said railway company at such point or points thereon as that they will not interfere with the ordinary travel upon and use of the said railways, as the said poles have been heretofore and now are
54 located thereon, with the right to place cross arms and fixtures thereon and to string wires, together with the right to maintain and operate the same, and also the right to cable crossings where the said lines cross navigable waters, in order to connect the lines of wire upon the poles with other lines of wire belonging to the said telegraph company, upon the said railways, as the plaintiff's system is now constructed, maintained and operated for the communication of intelligence to all parts of the United States, and as the same may be required to be extended and increased to meet the increasing demand for facilities of communication between different parts of the country as an agent of interstate commerce, and as a method of transmitting messages for the Government of the United States and for the several departments thereof; that the plaintiff has sought from the said Pennsylvania Railroad Company to procure its consent to the continuance in the present location upon the said

right of way of the poles, cables, wires and fixtures where the same do not now interfere with the ordinary travel upon and use of said railways, with the provision that the same should be subject to reasonable changes to meet the requirements of changes in the situation of the said railways from time to time, so that the telegraph lines should not at any time hereafter interfere with the ordinary travel upon and use of the said railways; that the said railroad companies have refused to consent to the said location of the said poles, cables and wires and fixtures over and along the said railway or to agree or attempt to agree upon the amount of compensation which the said telegraph company should pay to the defendants for the use of their railroads by the plaintiff in order to construct, maintain and operate on said railroads a line of telegraph by the plaintiff as hereinbefore set forth, subject to all the conditions and provisions of the said act of Congress of July 24, 1866.

(14.) That the Western Union Telegraph Company attaches hereto a map showing upon the same the location of cable crossings, of poles and number of wires thereon, the location of wires upon the bridges of the said railway companies, and also the location of the said line of poles with reference to the tracks and structures of said railways as now located and maintained as hereinbefore set forth. And upon which location the plaintiff seeks to maintain and operate under the provisions, restrictions and conditions of said act of Congress of July 24, 1866, its said telegraph lines, and for the use of the defendant's said railroads the plaintiff is ready and willing and has offered and hereby again offers to make compensation.

55 (15.) The Western Union Telegraph Company further says that on or about the 6th day of July, 1894, it duly caused a certificate to be signed by its president and its corporate seal to be attached and filed in the office of the secretary of state of the State of New Jersey, in compliance with the provisions of an act of the legislature of the State of New Jersey, entitled "An act relative to corporations," approved May 15th, 1894, and a supplement thereto approved May 17, 1894.

Wherefore, the Western Union Telegraph Company prays that this court may proceed to appoint commissioners, or to empanel a jury, or issue a writ of *ad quod damnum*, or issue such other process or take such other modes of proceeding as may be agreeable to the principles and usages of law, and as shall be necessary to make inquiry and assessment of the amount of compensation to be paid by the said Western Union Telegraph Company for the use of the roadway or right of way of the defendants to construct, maintain, and operate its said line of telegraph over and along the said railways of the defendants, subject to the conditions and provisions named in the said act of Congress of July 24, 1866; and that upon the payment into court or to the proper owners, defendants herein, as this court may direct, of the amount of such compensation for the said rights and interests acquired thereby by the said Western Union Telegraph Company, possession be adjudged to the Western

Union Telegraph Company by this court of the said use, rights and interests according to law, and that the title to the said rights and interests as against the defendants and each of them, thereby vest in the said Western Union Telegraph Company for the purposes aforesaid, and that the court will divide the sum so paid and order its distribution among the defendants herein according to their respective rights, as they may appear; and for such other and further proceedings, order and judgment as may be proper in the premises.

The plaintiff has caused this petition to be signed by its president and its corporate seal attested by its secretary to be hereto affixed.

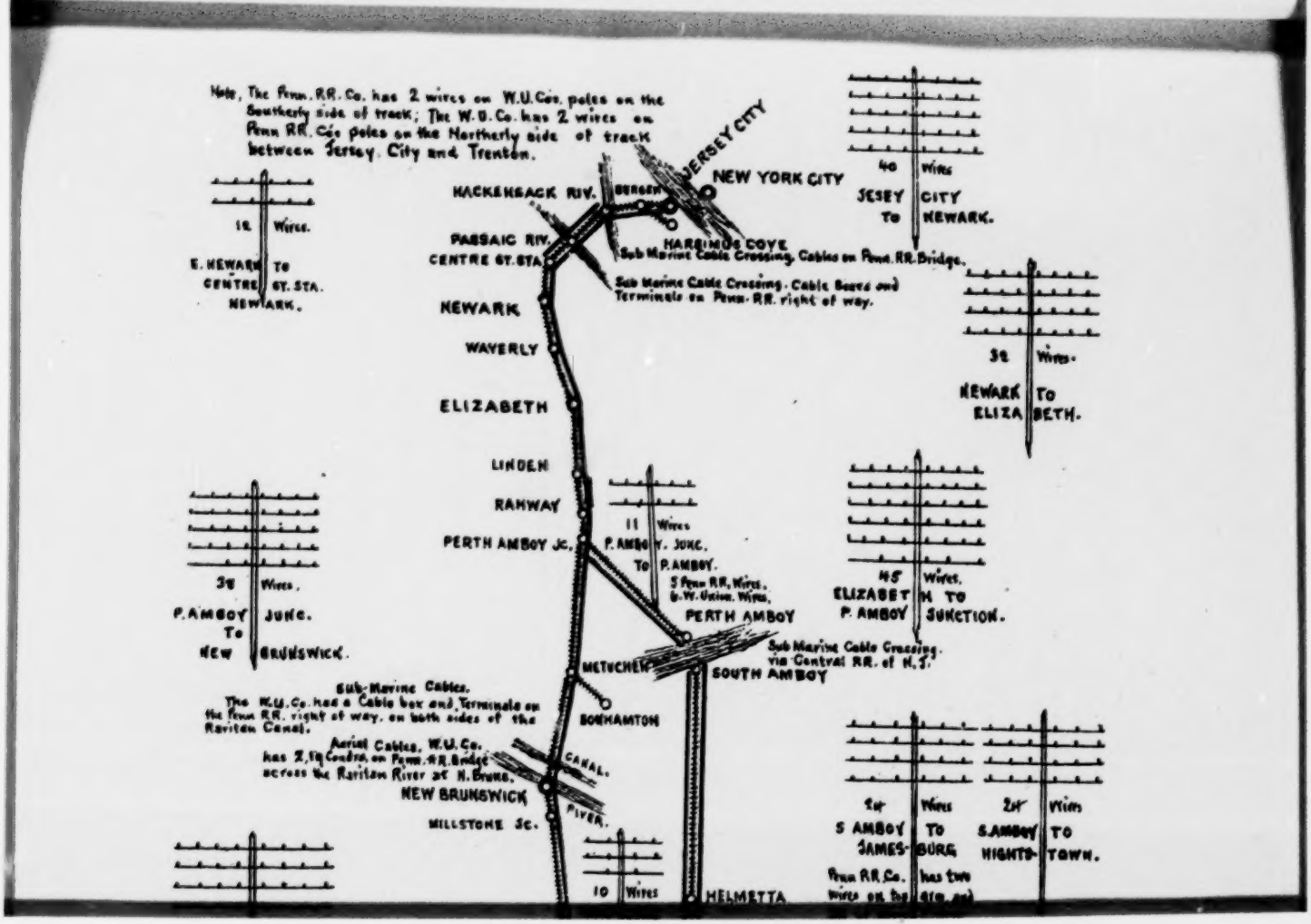
—— ——, *President.*

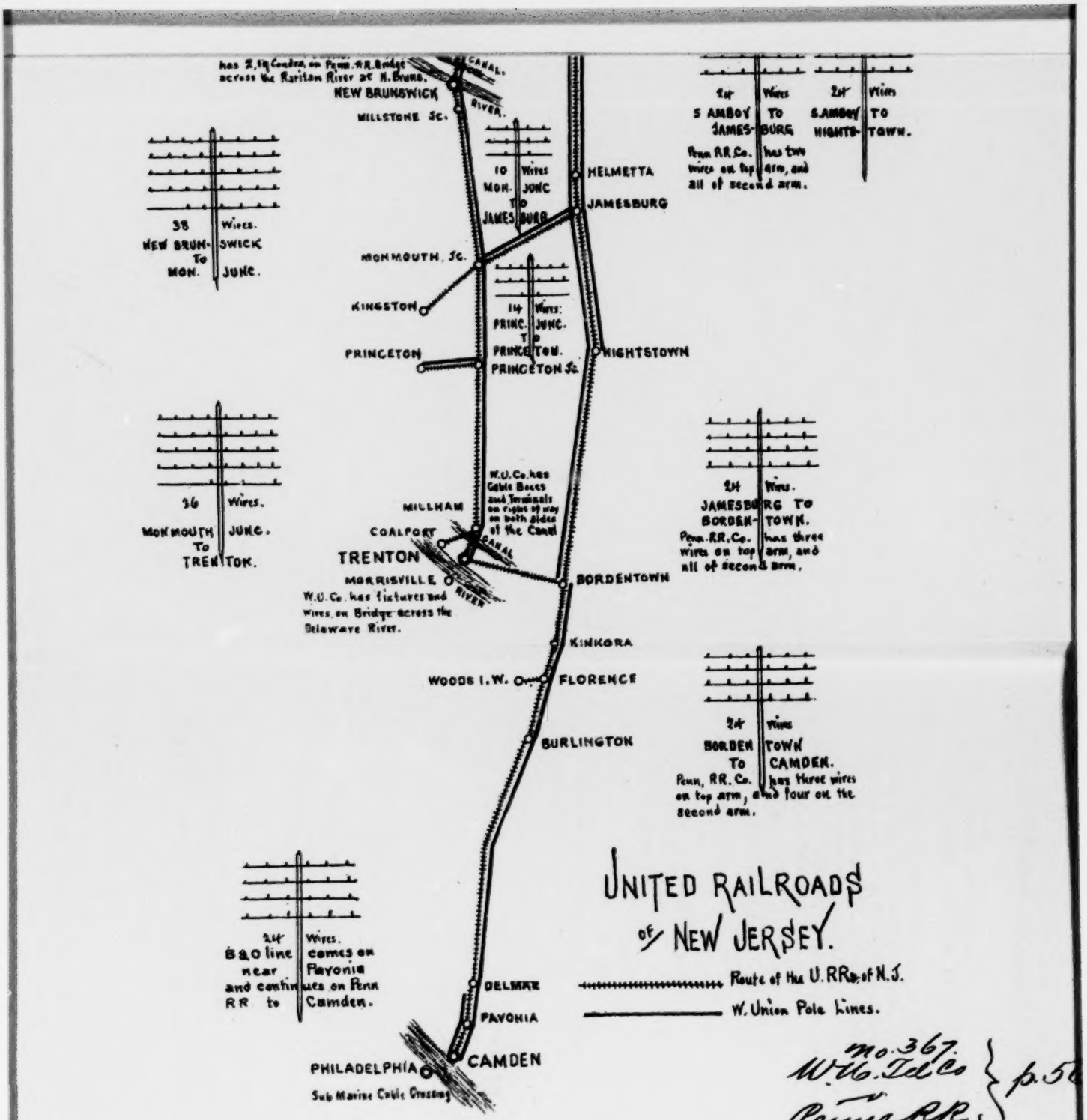
Attest: —— ——, *Secretary.*

—— ——,

Attorney for Western Union Telegraph Company.

(Here follows diagram marked p. 56.)


Note, The Penn. R.R. Co. has 2 wires on W.U.Cos. poles on the Southerly side of track; The W.U. Co. has 2 wires on Penn RR. Co's poles on the Northerly side of track between Jersey City and Trenton.
JERSEY CITY
NEW YORK CITY
40 Wires
JESEY CITY TO NEWARK.
HACKENSACK RIV.
BERGEN
HARRISONS COVE
Sub Marine Cable Crossing. Cables on Penn. R.R. Bridge.
PASSAIC RIV.
CENTRE ST. STA.
Sub Marine Cable Crossing. Cable Boxes and Terminals on Penn. R.R. right of way.
12 Wires.
E. NEWARK TO CENTRE ST. STA. NEWARK.
NEWARK
WAVERLY
ELIZABETH
32 Wires.
NEWARK TO ELIZABETH.
LINDEN
RAHWAY
PERTH AMBOY JC.
11 Wires P. AMBOY JUNC. TO P. AMBOY.
5 Penn R.R. Wires, 6 W. Union. Wires.
PERTH AMBOY
45 Wires. ELIZABETH TO P. AMBOY JUNCTION.
38 Wires. P. AMBOY JUNC. TO NEW BRUNSWICK.
Sub Marine Cable Crossing via Central R.R. of N.J.
METUCHEN
SOUTH AMBOY
BONHAMTON
Sub-Marine Cables.
The W.U.Co. has a Cable box and Terminals on the Penn R.R. right of way, on both sides of the Raritan Canal.
Aerial Cables. W.U.Co. has 2, 12 Conductor on Penn. R.R. Bridge across the Raritan River at N. Brunsw.
CANAL.
NEW BRUNSWICK
RIVER.
MILLSTONE JC.
10 Wires
HELMETTA
12 Wires S AMBOY TO JAMES-BURG
24 Wires S.AMBOY TO HIGHTS-TOWN.
Penn R.R.Co. has two wires on the 12 on


has 2, 19 Conductors on Penn. R.R. Bridge across the Raritan River at N. Brunswick.
NEW BRUNSWICK
CANAL.
RIVER.
MILLSTONE Jc.
38 Wires. NEW BRUNSWICK To MON. JUNC.
10 Wires MON. JUNC TO JAMESBURG
HELMETTA
JAMESBURG
MONMOUTH Jc.
KINGSTON
14 Wires: PRINC. JUNC. TO PRINCETON.
PRINCETON
PRINCETON Jc.
HIGHTSTOWN
24 Wires S AMBOY TO JAMESBURG
Penn R.R. Co. has two wires on top arm, and all of second arm.
24 Wires S. AMBOY TO HIGHTSTOWN.
36 Wires. MONMOUTH JUNC. To TRENTON.
W.U. Co. has Cable Boxes and Terminals on right of way on both sides of the Canal
MILLHAM
COALPORT
CANAL
TRENTON
MORRISVILLE
RIVER
W.U. Co. has fixtures and wires on Bridge across the Delaware River.
24 Wires. JAMESBURG TO BORDENTOWN.
Penn. R.R. Co. has three wires on top arm, and all of second arm.
BORDENTOWN
KINKORA
WOODS I. W.
FLORENCE
BURLINGTON
24 Wires BORDENTOWN To CAMDEN.
Penn. R.R. Co. has three wires on top arm, and four on the second arm.
24 Wires. B&O line near and continues RR to comes on Pavonia Camden.
DELMAR
PAVONIA
CAMDEN
PHILADELPHIA
Sub Marine Cable Crossing
UNITED RAILROADS OF NEW JERSEY.
Route of the U.RRs. of N.J.
W. Union Pole Lines.

No. 367
W. U. Tel. Co. } p. 56
Penna RR }

57 UNITED STATES OF AMERICA,
Southern District of New York, } ss:

Robert C. Clowry, being duly sworn, says he is president of The Western Union Telegraph Company, plaintiff in the above-entitled action; and is familiar with the affairs of said corporation; that he has read the foregoing petition and knows the contents thereof and that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes it to be true.

——.

Sworn to before me this — day of —— 1902.

——.

EXHIBIT No. 1.

(Ten cent revenue stamp.)

POST OFFICE DEPARTMENT,
WASHINGTON, D. C., *Feb'y 17th*, 1899.

I, Perry S. Heath, acting Postmaster-General of the United States of America, certify that the annexed is a true copy of the original acceptance on file in this department:

In testimony whereof, I have hereto set my hand and caused the seal of the Post Office Department to be affixed, at the city of Washington the day and year above written.

PERRY S. HEATH,
Acting Postmaster-General.

[SEAL.] B. W. T.

Annexed to the foregoing is the following, to wit:

Western Union Telegraph Company.

Meeting of the board of directors at the executive office, 145 Broadway, New York.

JUNE 5TH, 1867.

Resolved, That this company does hereby accept the provisions of the act of Congress entitled "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military and other purposes," approved July 24, 1866, with all the powers, privileges, restrictions and obligations conferred and required thereby; and that the secretary be and is hereby
58 authorized and directed to file this resolution with the Postmaster-General of the United States, duly attested by the signature of the acting president of the company, and the seal of the

corporation in compliance with the fourth section of said act of Congress.

Adopted unanimously.

[Seal Western Union Telegraph Co.]

HIRAM SIBLEY,
Acting President of Western Union Telegraph Company.
O. H. PALMER,
Sec'y W. U. Tel. Co.

Filed June 8th, 1867.

JOS. H. BLACKFAN, *Chief Clerk.*

In the United States Circuit Court for the District of New Jersey.

THE WESTERN UNION TELEGRAPH COMPANY, Plaintiff,
against
THE PENNSYLVANIA RAILROAD COMPANY and THE NEW JERSEY Railroad and Canal Company, Defendants.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

Belvidere Brooks, being first duly sworn, says that he is a citizen and resident of the State of New York and is general superintendent of the eastern and southern divisions of the Western Union Telegraph Company; that as such general superintendent he is in charge of all the lines of telegraph of that company east of the State line between Ohio and Pennsylvania, south of the Ohio river, and east of the Mississippi river in the United States; that he has been in the telegraph service for the past thirty years in various capacities, as operator and manager, assistant superintendent, and general superintendent, and in these various capacities has had experience in the construction, reconstruction, maintenance and operation of telegraph lines; and has learned and knows the cost and value of such lines; that the lines of telegraph along the various lines
59 of railway owned, controlled and operated by the Pennsylvania Railroad Company have been under the supervision and control of the affiant as general superintendent since on or about the 1st day of May, 1902; that he has personally inspected most of said lines and has, in his official capacity as general superintendent received reports of inspection of all of said lines from time to time and knows from said official reports and from his inspection of said lines the condition, capacity and value of the said lines and the character of the business that is transacted on and over said lines and each of them, the connections of said lines, and the relations of said lines to the other lines in the system of telegraph lines of the Western Union Telegraph Company as operated by it from its central office in the city of New York. That he has personally inspected the lines involved in the above-entitled action situated within the State of New Jersey and knows the general

condition of the same and the connections of the same and the business conducted upon and for the same; that the said lines involved in the above-entitled action connect with through lines on the lines of railway of the defendant Pennsylvania Railroad Company reaching to Philadelphia and thence to Baltimore and Washington and points beyond on the south and through Philadelphia to Harrisburg, Pittsburg, and points beyond on the west, the same being operated as a continuous and connected system of telegraph lines, and that the said lines are constructed, maintained, and operated as such continuous and connected lines of telegraph; that affiant knows and is able to state the reasonable and fair value of the physical property constituting said system of telegraph lines as the same now stands and exists along and upon the lines of railway owned, controlled, and operated by the Pennsylvania Railroad Company and referred to and included in the contract between the Pennsylvania Railroad Company and the Western Union Telegraph Company dated September 20th, 1891, attached to the bill in the above-entitled cause as Exhibit 1; that the poles, wires and physical property constituting the said lines of telegraph as they now stand and are operated and maintained along and upon the said lines of railway are of the value of one million, two thousand dollars ($1,002,000.00); that affiant, from his experience in the construction, operation and maintenance of telegraph lines, knows the value of the materials and property composing the said lines of telegraph, both new and second-hand, and is able to state from his knowledge and experience the value of said lines when taken down and removed from the said
60 lines of railway owned, controlled or operated by the Pennsylvania Railroad Company and included within the said contract exhibit; that the said lines of telegraph taken down and removed from the premises of the said railroad company would not exceed in value one hundred and seventy-five thousand dollars ($175,000.00); that affiant has had experience in the construction, maintenance and operation of telegraph lines along and upon lines of railway and that such construction, maintenance and operation of telegraph upon lines of railway is universal throughout the United States affiant knows from experience and observation the extent of interference by telegraph lines with the ordinary travel upon said railways, and telegraph lines constructed, maintained and operated as the lines of the Western Union Telegraph Company are maintained and operated along and upon the railway lines owned, controlled or operated by the Pennsylvania Railroad Company, as hereinbefore described, do not interfere with the ordinary travel upon said lines of railway, and that the said lines of telegraph can continue to be so maintained and operated as not to interfere with the ordinary travel upon and operation of said railways; that in the maintenance of telegraph lines along and upon railways it is customary and usual from time to time, in case of change of tracks or a location of tracks or of making of additional tracks, to shift a portion of the poles to accommodate the said changes in the tracks

or structures of the railway, and that this is well understood by railway and telegraph managers, and that with such changes made in the said telegraph lines, poles, and wires, it is entirely practicable to accommodate the said telegraph lines to the daily operation of said railways without any interference herewith or with the travel thereon and that the said presence of said telegraph lines along and upon said railways will not interfere with the operation of said railways in any manner.

Affiant further says that he knows the situation and value of the physical property composing the lines of telegraph within the district of New Jersey referred to in the foregoing suit, which form a part of the lines hereinbefore described and connected with and operated as a part of the same; that the value of the said physical property of the lines in the district of New Jersey under the jurisdiction of this court and involved in the above-entitled action, as the said lines now stand, and are operated, is of the value of three hundred and forty-five thousand dollars ($345,000.00); and that the
61 value of the said physical property in said lines removed from the premises of the said railway company would be of the value of not to exceed fifty-five thousand dollars ($55,000.00); and that the said lines can be maintained and operated along and upon the lines of railway as hereinbefore described without interference with the ordinary travel upon or the operations of said railways or any of them.

Affiant further says that he knows the amount of telegraph business that is being transacted over and upon said lines for the public and for the Government of the United States and that said lines are at all times taxed to their utmost capacity to enable the telegraph company to discharge its duty to the public and the Government of the United States in the transmission of messages and telegraphic despatches for the public, and that the cutting of said lines out of the system of the Western Union Telegraph Company on the first day of December, 1902, as contemplated by the notice given by the Pennsylvania Railroad Company would result in depriving the public and the Government of the United States of facilities that are now being used and that the Western Union Telegraph Company would not then be able, notwithstanding the utmost diligence and effort made by it for the past six months, to provide facilities to accommodate the public — to afford other facilities to equally accommodate the public business.

That he has read paragraph 26, 27 and 28 of the bill in the above-entitled action, and that the allegations thereof in respect of the matters referred to in the foregoing affidavit are true. That in addition to the damages to the physical property of the *telegraph company to the business of the said company are in-* telegraph company by the cutting down and removal of said lines, the damages to the business of the said company are incapable of direct estimate, but they are very great and not capable of being compensated for in damages.

BELVIDERE BROOKS.

Sworn to before me this 22d day of November, 1902.

CHARLOTTE A. VAN BRUNT,
[L. S.] *Notary Public, Kings County, No. 4.*

Certificate filed in New York county.

62 United States Circuit Court for the District of New Jersey.

THE WESTERN UNION TELEGRAPH COMPANY, Complainant,
vs.
THE PENNSYLVANIA RAILROAD COMPANY and THE United New Jersey Railroad and Canal Company, Defendants.
} On Bill, &c.

Order to Show Cause.

(Filed November 22, 1902.)

On reading and filing the bill of complaint in the above entitled cause, and the affidavits annexed thereto,

It is, on this twenty-second day of November, A. D. nineteen hundred and two, ordered that the defendants The Pennsylvania Railroad Company and The United New Jersey Railroad and Canal Company show cause before this court, at a session thereof to be held at the post-office building in the city of Trenton, on Monday, the eighth day of December, nineteen hundred and two, at ten thirty o'clock in the forenoon, why a preliminary injunction should not issue according to the prayer of the said bill of complaint.

And it is further ordered that in the meantime, and until the further order of this court, the said defendants and each of them, their servants, agents and employés, do desist and refrain from cutting down or removing, or in any manner interfering with the maintenance and operation of the complainant's lines of telegraph, or any of them, now standing, existing and being on the several railroads of the said defendants, or either of them, described in the said bill of complaint.

And it is further ordered that a copy of this order and of the said bill of complaint (neither of which need be certified) be served upon the said defendants within three days from the date hereof.

ANDREW KIRKPATRICK, *Judge.*

63 In the United States Circuit Court for the District of New Jersey.

THE WESTERN UNION TELEGRAPH COMPANY
vs.
THE PENNSYLVANIA RAILROAD COMPANY and THE UNITED NEW JERSEY RAILROAD and CANAL COMPANY.

Affidavit of Charles E. Pugh.

(Filed December 18, 1902.)

Charles E. Pugh, being duly sworn, deposes and says:

1. I am the second vice president of the Pennsylvania Railroad Company and as such have immediately under my supervision the operation of the company's railroad system. I have been connected with the railroad company for upwards of forty years and am thoroughly familiar with its past and present use of the right of way of the railroads belonging to the United New Jersey Railroad and Canal Company, of which the Pennsylvania Railroad Company is the lessee, and with the probable extent of its future use thereof. I have also had considerable familiarity for many years with the nature and extent of the telegraph wires and poles which have been used in connection with said railroads.

2. On or about the twentieth day of September, 1881, a contract for the term of twenty years from its date was entered into between the Western Union Telegraph Company and the Pennsylvania Railroad Company, of which a copy, marked "Exhibit A" is hereto attached. This contract was entered into by the railroad company in order that it might be enabled to secure telegraphic facilities necessary to it in and about the transaction of its business, which it was not able properly and sufficiently to secure by a line of telegraph wires and poles owned by and operated exclusively by itself. By said contract it secured a considerable revenue to itself and was also enabled to secure telegraphic facilities requisite in the transaction of its business as above stated.

3. Under said contract a line of poles has been maintained by the Western Union Telegraph Company, which covenanted to remove the same after receipt of a notice as to removal as in and by said contract is specified. Operations under the same convinced the officers of the railroad company that it would be safer and
64 better for it, in the proper transaction of its business of transportation, to reserve to itself the ownership of any poles which under any new contract might be erected. Danger to persons and to property transported on the railroad is involved in the construction and maintenance on its line of a line of telegraph poles and wires not under the control of the railroad company. It is necessary that it shall, from time to time, be able to make such changes

in the location and construction of the poles and wires as it shall find necessary for safety and convenience.

The Western Union Telegraph Company, under said contract, has constructed and operated on the line of the railroad such a line of poles, on which are fastened arms or cross-bars, on which latter the wires are strung. The ordinary width of these cross-bars is about seven feet, eleven inches. Where the pole is so located as to bring the whole of the cross-bar within the line of the right of way of the railroad, it is necessarily located about four feet from the edge. Poles can be located upon the extreme edge of the right of way only when used in connection with cross-bars on one side thereof. In this case the cross-bar would project beyond the pole over the right of way about seven feet, eleven inches. In case of storm of snow or ice, danger to persons and property transported on the railroad thereunder will necessarily be involved in the latter mode of construction. I do not approve of such mode. At certain places along the line of our railroad, especially at curves, the poles require bracing. This can be done either by guy wires or ropes, or by other poles or appliances anchored or planted at some distance from the pole, braced against the pole. These guy wires, ropes or bracing poles necessarily occupy a considerable portion of the right of way.

For many years the railroad company has operated in its business exclusively its own line of wires and poles also located on the right of way.

4. The aforesaid contract having terminated by reason of the expiration of the term specified therein, the railroad company, pursuant to the terms of the contract, on or about the sixteenth day of May, 1902, notified the Western Union Telegraph Company to remove its poles within six months from the first day of June, 1902. By virtue of the expiration of the term of twenty years specified therein, said contract was terminated and the Pennsylvania Railroad Company was at liberty to enter into such other contracts with such other telegraph companies as it should find necessary. It was necessary for it to enter into some contract by which it would be enabled to secure for itself requisite telegraph facilities for the proper conduct of its business not procurable solely through the use of its own line of telegraph wires and poles.

5. On or about the twenty-fifth day of June, 1902, it entered into a contract with the Postal Telegraph Cable Company, a corporation engaged in the business of interstate and other telegraphing similar to that conducted by the Western Union Telegraph Company, by means of which it reserved to itself the entire ownership and control of all the telegraph poles which shall be constructed upon the right of way, together with such additional telegraph facilities as it deemed necessary for its purposes. A copy of this contract, marked "Exhibit B" is hereto attached. Both of the parties thereto are about to enter upon the performance of its conditions.

Under this contract the railroad company will have the entire control of the location, erection and maintenance of telegraph poles upon the right of way, and will be enabled to shift the same from

time to time in such way and manner as it shall deem necessary in the proper conduct of its business of transportation.

The pecuniary benefits which will result to the railroad company from this contract will be large. It is difficult to estimate the same, but it is believed that the benefits it will derive under said contract, properly applicable to the portion of its system now sought to be appropriated by the Western Union Telegraph Company, will amount at once nearly to seventy-five thousand dollars per annum, and that the value of such benefit will annually increase largely.

6. After receipt of the notice given to it, the Western Union Telegraph Company removed its instruments from the depots and stations of the railroad company and is now doing its business in other places by it established near the same.

7. I believe, and therefore aver, that the Western Union Telegraph Company could readily have made, after the receipt by it of notice of removal, such other arrangements as would have enabled it to conduct its whole business fully and completely by means of wires and poles located outside of the railroad right of way.

I aver that there is no necessity for any appropriation by the Western Union Telegraph Company of any portion of the right of way of the railroad company. It can transact its whole business of telegraphing, interstate and within the State, without
66 any appropriation of any portion of said right of way. Nearly all, if not all, the cities and towns located along the system of the Pennsylvania Railroad Company in the State of New Jersey are connected by roads and highways along which the Western Unoin Telegraph Company has either already directly or through its affiliated companies, erected lines or wires or poles, or along which it can erect the same at no extraordinary expense. If it possesses the right of eminent domain which it claims for itself or for its affiliated or controlled companies, it can easily procure such right of way as does not exist along said roads and highways.

I believe, and therefore aver, that the Western Union Telegraph Company is now able to inaugurate, with little or no delay and with no extraordinary expense, a line or lines of wires and poles amply sufficient for all its purposes.

I believe, and therefore aver, that one of the purposes of its present proceeding is to embarrass the Pennsylvania Railroad Company, which has severed its contract relations with it, in carrying out the contract it has entered into and which it has been necessary for it to enter into with the Postal Telegraph Cable Company.

8. The Postal Telegraph Cable Company, upon the removal by the Western Union Telegraph Company of its line of poles now located upon the right of way of the railroad company, will be enabled at once to do for the Pennsylvania Railroad Company the business of telegraphing necessary for the latter, over the wires which it will string upon the poles the Pennsylvania Railroad Company is ready to erect immediately.

If the doing of what is necessary to carry out the contract with the Postal Telegraph Cable Company be interfered with or delayed,

very great injury will result to the railroad company and it will be put to very great inconvenience in and about the transaction of its business.

It is necessary to construct the new line of poles required to be constructed under the said contract with the Postal Telegraph Cable Company in about the same location as that of the line of poles belonging to the Western Union Telegraph Company which it has been notified to remove on or before the first day of December, 1902.

Outside of this location, there is no other part of the right of way of the railroad company which can be used without most serious injury to its business. The construction of a line of poles and wires in any other than said location would deprive the railroad
67 company of the use of a portion of its right of way absolutely required by it for use, and by it in actual use, or absolutely needed for necessary use in the immediate future, in and about its business of transportation. Such construction would interfere with the ordinary travel on and transportation along said railroad.

9. The right of way belonging to the United New Jersey Railroad and Canal Company of its entire width, is absolutely necessary for it in and about its business, and is in actual use by it or absolutely needed for necessary use in the immediate future. No portion of said right of way can be devoted to any other purpose without great injury to it, or without interference with the ordinary travel, or without ireparable damage.

As I have already said, the railroad company requires for its purposes certain telegraph facilities additional to those possessed by it. These it can only procure by means of the additional line of wires and poles concerning which it has contracted with the Postal Telegraph Cable Company. Both lines of poles, as I have said, should be in its own ownership and under its own control. In no other way can it properly insure such changes of location and construction as from time to time will be necessary. The location and construction of these two lines of wires and poles leave no space whatever upon the right of way which is not presently used or necessary to be used by it.

At many places the whole right of way is completely occupied by lines of tracks and the necessary intervening spaces. From time to time it will be necessary for the railroad company, in many other places, to increase the number of its tracks.

The appropriation to the use of a telegraph company of any portion of the right of way would hamper irretrievably the railroad company in the necessary straightening, changing and increasing of the number of its tracks.

From time to time during the last twenty years the railroad company has found the right of way entirely inadequate in width for its business purposes, and has been obliged to widen the same at a very great expense. It will doubtless be necessary for it in the future, from time to time, to acquire additional lands. Its present right of way is inadequate in many places for its present purposes,

and will be increasingly inadequate from time to time in many additional places.

10. An injunction restraining the railroad company from compelling the removal by the Western Union Telegraph Company of its poles in accordance with the notice the latter has received,
68 would prevent the carrying out at once of the Postal Telegraph Cable Company's contract, and would expose the railroad company to incalculable inconvenience in the transaction of its business.

11. It is more than probable that the railroad company from time to time will be able only by securing a greater width of right of way by acquiring additional ground, to allow the continued location upon it of the line of wires and poles for which provision has been made under the contract with the Postal Telegraph Cable Company.

12. There will be no room upon the two lines of poles which will be erected, one for the exclusive use of the railroad company and the other, under the contract with the Postal Telegraph Cable Company, for the wires of any other company.

13. At all places along the line of the Pennsylvania Railroad system between Jersey City and Trenton there are two tracks. At most places there are four, and in many places a considerably greater number. The width of the track is about four feet, eight inches; for safe railroad business there must be between and on each side of each line of track, a space of seven feet, and all new construction provides for eight feet.

CHAS. E. PUGH.

Sworn and subscribed before me, a notary public of the Commonwealth of Pennsylvania residing in the city of Philadelphia, this 17th day of December, 1902.

HIRAM H. POTTS,
Notary Public.

Commission expires February 26th, 1905.

"EXHIBIT A."

(288 A.)

Agreement between the Pennsylvania Railroad Company and the Western Union Telegraph Company, Dated September 20th, 1881.

This agreement, made the twentieth day of September, anno Domini one thousand eight hundred and eighty-one, between the Pennsylvania Railroad Company, a corporation of the State of Pennsylvania, hereinafter for brevity designated as the railroad
69 company, and the Western Union Telegraph Company, a corporation of the State of New York, hereinafter for brevity designated as the telegraph company, witnesseth:

First. Said railroad company hereby grants, to the extent of its corporate power so to do, to the said telegraph company, a right to place, maintain and use upon the line of the right of way of the Pennsylvania railroad, and of the railroads owned, operated, or leased by it, or in which it is otherwise interested, as enumerated in the schedule hereto attached, marked "A," and made part of this agreement, a single line of telegraph poles, except where two are hereinafter authorized, with the privilege of erecting and maintaining thereon such number of wires as the telegraph company may from time to time elect, said line to be located and placed under the direction of the general manager of the railroad company, or such other officer as the railroad company may designate for that purpose: *Provided*, That the location of any of the telegraph company's poles shall, from time to time, be changed from one point to another on the railroad right of way at the expense of the telegraph company, in such manner as the general manager, or other proper officer of the railroad company may direct, so as not to interfere with the operations of the railroad: *Provided, however*, That the telegraph company shall have the right to maintain two lines of poles and such number of wires as it may deem necessary, on the south side of the main line of the railroad company's railroad between Jersey City and West Philadelphia, it being understood that the railroad company may require and permit the telegraph company either to put its wires under the railroad right of way, or remove them from said right of way through the various cities, towns or villages, or any of them, between West Philadelphia and Jersey City, including both of those cities, the telegraph company reserving the right to elect whether it shall put its wires under the railroad right of way or transfer them to other routes. The telegraph company shall have the right to maintain, renew and repair its underground line now running through the property of the railroad company in Jersey City. And should additional corporate action upon the part of any of the corporations controlling the roads named in "Schedule A," hereto attached, be necessary to cover the lines therein named, the railroad company will also endeavor to procure such corporate action upon the part of such corporations.

Second. Said railroad company also grants to said telegraph company the right to lay down and maintain submarine cables, and to connect the same on the shores of any stream with the land poles or wires of the telegraph company, on the rights of way and grounds of the railroad company, in such locality, and in such manner, under the direction of the general manager aforesaid, or such other officer as the railroad company may designate for that purpose, as shall not interfere with the operations of the railroad.

Third. Said railroad company reserves to itself the option of determining whether the telegraph company may place a wire or wires, in addition to those provided for in the seventh clause hereof, upon the poles of the railroad company, upon any or all of the lines embraced in said schedule, the telegraph company agreeing that if

such privilege be granted to and availed of by it, it will pay to the railroad company for the same, four dollars per mile per annum for each wire placed in pursuance thereof.

Fourth. The railroad company agrees to transport to and from regular stations, free of charge, over said lines of railroad embraced in this contract, the officers and employés of the telegraph company when engaged in building and repairing, equipping, and operating the telegraph lines and wires hereby authorized upon said railroads, and also to transport free of charge to regular stations over said railroads the material to be used in the building or repairing, equipping or operating of said telegraph lines and wires herein authorized to be constructed, maintained, or operated on the railroads named in Schedule A; the telegraph company hereby agreeing that it will hold harmless and indemnify the said railroad company against all responsibility for damages, costs, or expenses that may be incurred or recovered for any injury by accident or otherwise to any person or property transported free under the terms of this agreement.

Fifth. The railroad company agrees that it will not hereafter grant the right to any other party or telegraph company to erect, maintain, or use poles or wires upon the right of way, or the buildings, bridges, or other structures or fixtures connected with the right of way of any of the railroads embraced in this agreement, unless such other party or telegraph company shall pay annually for such right in money an amount equal to the total annual money compensation herein agreed to be paid by the telegraph company, to wit, seventy-five thousand dollars per annum.

If under the terms of this agreement, the railroad company shall hereafter grant to any other party or telegraph company the
71 right to erect poles with wires thereon, the railroad company shall have the right, anything in this agreement contained to the contrary notwithstanding, to make the same terms, or terms which in the opinion of the railroad company's board of directors will be equally favorable, with such party or telegraph company, as to receiving and transmitting messages for the public, as are made with the Western Union Telegraph Company in the ninth article of this agreement. The provisions of this section not to apply to underground lines of wire.

Sixth. The telegraph company agrees to pay annually to the railroad company during the continuance of this agreement for the privileges granted in the first and second clauses hereof, whether the same be availed of or not, the sum of twenty-five thousand dollars ($75,000) in monthly installments of six thousand two hundred and fifty dollars ($6,250) each, upon the twentieth day of each month, the year to begin on the twentieth day of September, 1881, and the first payment to be made on the twentieth day of October, 1881, and also to sell, transfer and deliver over to the railroad company as an additional compensation for the privileges hereby granted, the entire line of poles as it now exists on the north side of the railroad company's railroad, between Jersey City and Kensington (except

through Marion, East Newark, Newark and Rahway), and also six of the best number eight or nine gauge continuous wires now upon said poles, and on the poles of the telegraph company through said excepted places, and two additional like wires upon the poles of said telegraph company on the south side of said road from Philadelphia to Jersey City, the existing poles and wires so to be delivered to the railroad company, being of an estimated value of forty-one thousand dollars ($41,000), with the agreement that any wires in excess of the six wires upon the poles on the north side of the said road so to be transferred to the railroad company shall remain thereon until they can be removed by the telegraph company, which shall not be later than one year from date: *Provided, however*, That the telegraph company may leave and continue on said poles two wires, as provided for in section seventh.

Seventh. The telegraph company hereby grants the right to the railroad company to place two of its wires upon the poles and in the cable houses of the telegraph company without charge, and also the right to place, from time to time, additional wires necessary for the business of the railroad company upon any of the poles and in the cable houses of the telegraph company on said lines of
72 railroad, upon the payment by the railroad company of four dollars per mile per annum for each of such additional wires; and the railroad company hereby grants the right to the telegraph company to place two of its wires upon the poles and in the cable houses of the railroad company without charge. The telegraph company will furnish at cost, or the railroad company may furnish at its own expense, cable conductors for connection with the railroad company's wires.

Eighth. The telegraph company agrees to transmit over its wires for the railroad company, during the continuance of this agreement, with the same promptness, efficiency, and dispatch as it does for any other party, for the sum of fifteen thousand dollars ($15,000) per annum, payable in equal monthly installments of one thousand two hundred and fifty dollars ($1,250) each, all messages pertaining to the business of said railroad company, or of any of the companies whose lines are included in Schedule A and covered by this agreement, or any message relating to its business sent by an officer of either company as embraced in said schedule, to and from all points on the lines of said telegraph company throughout the United States and the British provinces, now erected or which may hereafter be erected, as well as upon any lines which the said telegraph company may now or hereafter during the continuance of this agreement secure the use of by purchase, lease, or otherwise in the United States or the British provinces.

The transmission of messages for the railroad company or any of the companies whose lines are included in Schedule A, and the transportation of employés of the telegraph company, as hereinbefore provided, shall be authorized by franks or passes to be issued by each party to the other, upon application of a properly authorized officer of the party requiring such service.

Ninth. At all telegraph stations of the railroad company, upon the lines of said railroads, the railroad company shall, at its option, have the right to receive, transmit, and deliver messages for the public, and if such messages be sent over the telegraph company's wires—the right so to forward them being hereby given to the railroad company—it shall be at the tariff rates of the telegraph company. The operators of the railroad company receiving, forwarding, and delivering messages so interchanged between the telegraph company's and the railroad company's lines, shall be considered as acting as the agents of the telegraph company, and such operators shall remit all receipts for such messages to the telegraph company, which company shall furnish to the railroad company a monthly statement thereof, and the telegraph company agrees to pay monthly to the railroad company one-half of the cash receipts for such service, after deducting all tolls on ocean cable messages and tolls belonging to lines of other companies paid on such messages, which shall be retained in full by the telegraph company. If the railroad company grant the right to any other telegraph company to have an office or offices in any of the depots or buildings of the railroad company, the same privilege in the same depot or building shall be granted to the Western Union Telegraph Company on as favorable terms and with as favorable location as shall be granted to said other company.

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Tenth. The railroad company shall have the right to the free use of any telegraphic patent rights, or new discoveries, or inventions that the telegraph company now owns, uses, or controls in its general telegraph business, or which it may hereafter own, use, or control as aforesaid, so far as the same may be necessary to properly carry on the business of railroad telegraphing on the line of said railroads as provided for herein.

Eleventh. The telegraph company agrees that, as a part of the service for which it is to receive the allowance of fifteen thousand dollars ($15,000) under article eighth of this agreement, it will receive and transmit cable dispatches on the business of any of said railroad companies to Europe and other foreign countries, aggregating at current rates the sum of one thousand dollars ($1000) per annum, the railroad company agreeing to pay any excess on cable messages over that amount in each year.

Twelfth. Neither the general terms of this agreement, nor any stipulation contained herein, shall have the effect of creating a covenant of quiet enjoyment, either expressed or implied, on the part of the railroad company, or any other company whose action it may procure, and in favor of the telegraph company, as against the owner of the fee simple of the land over which the railroad or other company has the right of way, nor as against the exercise of the power of eminent domain upon the part of any other company possessing it by grant from the Commonwealth or State creating such corporation; *And it is further agreed*, That if anything herein contracted to be done, or not to be done, shall be held to be invalid for want of corporate or legal authority to make an agreement to

such an extent, it shall not give to either party any claim for damages by reason of an excess or defect of corporate or legal authority in so doing.

Thirteenth. This agreement is to continue in force for and during the term of twenty years from its date, and shall be binding
74 upon the respective companies, their successors and assigns, and neither party shall have the right to assign the whole, or any part hereof, without the consent of the other, given in writing: *Provided*, That if before the expiration of said twenty years the railroad company shall, from any cause, cease to own, operate or control any or either of the railroads enumerated in Schedule A, without having procured the corporate assent to this agreement of the proprietary corporation, this agreement shall become inoperative as to such railroad or railroads after the railroad company shall cease to own, operate or control the same, and in such event, the annual payment provided for in the sixth section hereof shall be reduced in such proportion not exceeding the mileage of the railroad or railroads so ceased to be owned, operated or controlled, as may be agreed upon between the parties hereto; and in case they cannot agree, such proportion as may be fixed by the arbitrators as per article eighteenth of this agreement.

Fourteenth. It is a condition of this agreement that the railroad company is not to be responsible for, and the telegraph company hereby covenants and agrees to save the railroad company harmless, and indemnify it against any loss or damages of any kind arising from any injury to persons in the employ of, or property belonging to the telegraph company, while being carried free over any of said railroads under this agreement; and the telegraph company shall not be responsible for, and the railroad company agrees to indemnify and save harmless the telegraph company against any loss or damages of any kind arising from or on account of any error or failure in the transmission or delivery of messages sent for the railroad company under this agreement.

The telegraph company hereby assumes all responsibility for damages resulting from errors, failures, delays, or other defaults or mishaps in the transmission or delivery of messages occasioned by the fault of persons employed directly by it; and the railroad company hereby agrees to pay one-fourth (¼) the amount of any damages, costs, or legal expenses which may be recovered against or incurred by the telegraph company on account of any errors, failures, delays, or other defaults or mishaps in the receipt, transmission, or delivery of messages, occasioned by the fault of persons employed by the railroad company, and acting as agents of the telegraph company, in the transaction of commercial or public telegraph business, the telegraph company agreeing to pay the remaining three-fourths (¾).

75 Fifteenth. If any monthly payment herein provided for be not made within sixty days after it shall have become due, and shall have been demanded by written notice, delivered, to the treasurer, or an executive officer of the party in default, or if any

other covenant herein made shall not, after sixty days' written notice of default and demand made by either party in the manner herein provided, be fulfilled by the other party, the contract may, at the option of the party demanding such fulfillment, be rescinded, and such rescission shall not relieve the party in default from liability for any amount due or for damages for non-fulfillment of such covenant or of any other covenant.

Sixteenth. If no new agreement be made by the parties hereto, the telegraph company shall at the termination of this contract, or at any time thereafter, upon receiving written notice from the railroad company, remove within six months from the receipt of said notice all of its poles and wires and leave the property of the railroad company in good condition and free from the encumbrance thereof to the satisfaction of the general manager, or other proper officer of the railroad company, and if not so removed the railroad company may remove them at the expense of the telegraph company: *Provided, however*, That the payment agreed to be made by the telegraph company to the railroad company in the sixth clause hereof, and by the railroad company in the eighth clause, shall not apply to the said six months, the companies respectively hereby expressly agreeing to waive the same.

Seventeenth. All and all manner of contracts, engagements, or arrangements whatsoever hitherto made between said railroad company or any of the companies named in Schedule A hereto attached, or any company merged or consolidated with the companies therein named and the said telegraph company or any other company or companies, whose stock or lines may be owned or controlled by said telegraph company or made with other telegraph companies or individuals, and assigned and transferred to or owned or claimed by said telegraph company for or in respect to the right of way over the railroads embraced in the schedule hereto attached, are hereby cancelled and declared to be void and of none effect as between the parties hereto and thereto, and all and all manner of claims arising thereout, whether in suit or otherwise, are hereby terminated and settled, and the parties mutually released therefrom, and the parties complainants in any such suits agree to discontinue the same, each party agreeing to pay its own costs. This
76 not to release any money actually due by either party to the other for rent or services rendered under said contracts.

Any easement or right of way heretofore acquired by the telegraph company upon any of the roads embraced in this agreement, either directly by contract or by assignment of contracts or agreements made by other companies with the railroad company, or with any of the companies whose roads or property are embraced in the schedule hereto attached, is hereby relinquished and abandoned, and the rights and easements of the telegraph company upon the right of way of said railroad company shall be such only as are granted by this agreement, and shall cease with its termination.

Eighteenth. In case of any difference of opinion between the parties hereto in relation to any of the provisions of this agreement, the

matter in dispute shall be referred to two arbitrators, one of whom shall be appointed by the railroad company and the other by the telegraph company, and if the two referees so chosen cannot agree, then the two so selected shall select a third like disinterested and competent party, and the decision of the said three referees, or a majority of them, shall be final and conclusive between the parties hereto; but if either of the parties hereto fail or refuse after ten days' written notice from the other to select a referee as aforesaid, then the party not in default shall select a referee as aforesaid for the party so failing or refusing to select, and the said two referees so selected if unable to agree shall select a third like referee, and the three so chosen, or a majority of them, shall proceed as hereinbefore mentioned, and the award of the said three referees, or a majority of them, shall be final and conclusive between the parties hereto.

In witness whereof, the parties to these presents have caused the names of their respective presidents to be hereunto subscribed and their corporate seals to be attested, the day and year first above written.

THE PENNSYLVANIA RAILROAD COMPANY,
By G. B. ROBERTS, *President.*

[Seal of the Penna. R. R. Co.]

Attest: JNO. C. SIMS, JR., *Secretary.*

77 THE WESTERN UNION TELEGRAPH CO.,
By NORVIN GREEN, *President.*

[Seal of the W. U. Tel. Co.]

Attest: A. R. BREWER, *Secretary.*

SCHEDULE A.

Philadelphia and Columbia railroad—West Philadelphia to Columbia, Pa.
Pennsylvania railroad—Harrisburg to Pittsburg, Pa.
Schuylkill River branch Pennsylvania railroad—Haverford street to Arsenal bridge.
Delaware extension Pennsylvania railroad—Arsenal bridge, West Philadelphia, to Dock Street depot.
Frazer branch—Frazer to near Woodland.
Columbia bridge—Over Susquehanna river at Columbia, Pa.
York branch—West end Columbia bridge to York, Pa.
Tyrone branch—Tyrone to junction Bald Eagle Valley railroad at Vail Station.
Hollidaysburg branch—Altoona to Hollidaysburg, with branch from Duncansville to Portage iron works.
Morrison's Cove branch—Hollidaysburg to Henrietta, Pa., with branch to Martinsburg.

Bloomfield branch—Roaring Spring to Ore Hill, Pa.
Williamsburg branch—Hollidaysburg to Williamsburg, Pa.
Springfield branch—Springfield Junction to Ore Mines.
Indiana branch—Blairsville Intersection to Indiana, Pa.
Port Perry branch—Pennsylvania railroad near Brinton's, to Pittsburg, Virginia and Charleston railroad at Thomson.
Hudson River ferries—New York city to Jersey City, across Hudson river.
New Jersey railroad—Hudson river, at Jersey City to point 3½ miles west of New Brunswick, N. J., with branches from Harsimus Junction to pier No. 3; East Newark to Market street, Newark, and Metuchen to Bonhampton.
Trenton branch Camden and Amboy railroad—3½ miles west of New Brunswick to east end of Trenton Delaware bridge, with branches from Princeton Junction to Princeton, and Monmouth Junction to Kingston.
78 Perth Amboy and Woodbridge railroad—Rahway to Perth Amboy, N. J.
Millstone and New Brunswick railroad—New Brunswick to East Millstone, N. J.
Rocky Hill and Kingston railroad—Kingston to Rocky Hill, N. J.
Camden and Amboy railroad, main line—Camden to South Amboy, with branches from Bordentown to Trenton, and Jamesburg to Monmouth Junction.
Pemberton and Hightstown railroad—Pemberton to Hightstown, N. J.
Burlington and Mt. Holly railroad—Burlington to Mt. Holly, N. J.
Mt. Holly, Lumberton and Medford railroad—Mt. Holly to Medford, N. J.
Camden and Burlington County railroad—Camden to Pemberton, N. J.
Vincentown branch of Burlington County railroad—Ewansville to Vincentown, N. J.
Belvidere Delaware railroad—Trenton to Manunka Chunk, with branch from Coalport to Millham.
Flemington railroad—Lambertville to Flemington, N. J.
Trenton Delaware bridge—Over Delaware river, from Trenton, N. J., to Morrisville, Pa.
Philadelphia and Trenton railroad—West end of Trenton Delaware bridge, at Morrisville, Pa., to Kensington Station, Philadelphia, with branch on Tioga street to Delaware river.
Frankford and Holmesburg railroad—Holmesburg Junction to Bustleton, Pa.
Connecting railway—Philadelphia and Trenton railroad at Frankford Junction, to Mantua Junction, on Pennsylvania railroad.
West Chester railroad—Near Woodland to West Chester, Pa.
East Brandywine and Waynesburg railroad—Downington to New Holland, Pa.
Pomeroy and State Line railroad—Pomeroy, Pa., to Philadelphia, Wilmington and Baltimore Railroad intersection, Del.

Hanover and York railroad—York to Hanover, Pa.
Littlestown railroad—Hanover, Pa., to Maryland State line, near Kingsdale.
79 Frederick and Pennsylvania Line railroad—State line, near Kingsdale, to Frederick, Md.
Harrisburg, Portsmouth, Mt. Joy and Lancaster railroad—Dillerville to Harrisburg, with branch from Middletown to Columbia, Pa.
Philadelphia and Erie railroad—Erie to Sunbury.
Sunbury, Hazelton and Wilkesbarre railroad—Sunbury to Tomhicken, Pa.
Mifflin and Centre County railroad—Lewistown Junction to Milroy, Pa.
Lewistown and Tuscarora bridge—Over Juniata river, at Lewistown, Pa.
Sunbury and Lewistown railway—Lewistown borough to Selinsgrove Junction, N. C. railway.
Bedford and Bridgeport railroad—Mt. Dallas, Pa., to Maryland State line, with branch on Dunnings creek.
Bald Eagle Valley railroad—Vail Station to Lock Haven, Pa.
Tryone and Clearfield railway—Vail Station to Curwensville, Pa., with branches to coal mines.
Lewisburg and Tryone railroad—Tryone to Pennsylvania Furnace, and Montandon to Spring Mills.
Lewisburg bridge—Over Susquehanna river, at Lewisburg, Pa.
Newry railroad—Portage iron works to Newry, Pa.
Ebensburg and Cresson railroad—Cresson to Ebensburg, Pa.
South-west Pennsylvania railway—Junction, near Greensburg, to Fairchance, Pa., with branches to coal mines.
West Pennsylvania railroad—Blairsville to Allegheny City, with branch to Butler, Pa.
Pittsburg, Virginia and Charleston railway—South Side, Pittsburg, to Bell Vernon.
Freehold and Jamesburg Agricultural railroad—Jamesburg to Sea Girt, N. J.
Pemberton and Sea Shore railroad—Pemberton Junction to Whiting's N. J.
Columbus, Kinkora and Springfield railroad—Kinkora to New Lisbon, N. J.
Florence Branch railroad—Florence, N. J., to Wood's iron works.
Camden and Philadelphia steamboat ferry—Camden, N. J., to Philadelphia.
West Jersey railroad—Camden to Cape May, N. J., with branch from Glassboro to Bridgeton.
80 West Jersey and Atlantic railroad—Newfield to Atlantic City.
Swedesboro railroad—Woodbury to Swedesboro, N. J.
Salem railroad—Elmer to Salem, N. J.
Columbia and Port Deposit railroad—Columbia, Pa., to Port Deposit, Md.

Cumberland Valley railroad—Harrisburg to Potomac river, at Powell's Bend, Md.
Dillsburg and Mechanicsburg railroad—Mechanicsburg to Dillsburg, Pa.
Mont Alto railroad—Junction near Chambersburg, to Waynesboro, Pa.
Southern Pennsylvania railroad—Junction near Marion, to Richmond, Pa.
Martinsburg and Potomac railroad—Potomac river, at Powell's Bend, to Martinsburg, W. Va.
Northern Central railway—Baltimore, Md., to Sunbury, Pa., with branches to Green Spring and Canton, Md.
Elmira, Jefferson and Canandaigua railroad—Watkins to Canandaigua, N. Y.
Chemung railroad—Horse Heads Junction, Erie railway, to Watkins, N. Y.
Elmira and Williamsport railroad—Williamsport, Pa., to junction with Erie railway, near Elmira, N. Y.
Shamokin Valley and Pottsville railroad—Sunbury to Mt. Carmel, Pa., with branch to Hickory Ridge colliery.
Summit Branch railroad—Millersburg to Williamstown, Pa
Baltimore and Potomac railroad—Baltimore, Md., to south end Long bridge, Washington, D. C., with branch from Bowie to Pope's creek.
Alexandria and Washington railroad—South end Long bridge to Alexandria, Va.
Alexandria and Fredericksburg railroad—South end Long bridge to Quantico, Va.
Bellefonte and Snow Shoe branch—Milesburg to Bellefonte, Pa.
Allegheny Valley railroad—Pittsburg to Oil City, and Red Bank to Driftwood, with branches.

81 "EXHIBIT B."

(795.)

Agreement Between Postal Telegraph-Cable Company and the Pennsylvania Railroad Company, Dated June 25th, 1902.

For the transaction of a commercial telegraph business over the railroad lines named herein.

This agreement, made and entered into this twenty-fifth day of June, 1902, by and between the Postal Telegraph-Cable Company, a corporation duly organized and existing under the laws of the State of New York, party of the first part, and the Pennsylvania Railroad Company, a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, party of the

second part, hereinafter for convenience referred to as the telegraph company and the railroad company, respectively, *witnesseth:*

Whereas, the telegraph company operates a telegraph system throughout the United States, and

Whereas, the railroad company owns, maintains and operates or controls the lines of railroad more particularly described in the exhibit marked Schedule A, hereto attached and made a part hereof, and

Whereas, the telegraph company desires the privilege of transacting a commercial telegraph business on and over the lines of railroad of the railroad companies specified in said Schedule A on the terms and conditions hereinafter stated.

Now, therefore, in consideration of the premises and of the covenants and undertakings hereinafter contained on the part of each party to be kept, observed and performed, and for other valuable considerations moving from each of the parties hereto to the other, receipt whereof is hereby acknowledged by each of them, it is hereby covenanted, stipulated and agreed by and between the parties hereto as follows:

I. The railroad company hereby grants to the extent of its corporate power so to do to the telegraph company during the period covered by this agreement, the privilege of transacting a
82 commercial telegraph business on and over the lines of railroad of the railroad companies specified in said Schedule A, but the easement herein granted is confined to the transaction of commercial telegraph business only and does not cover the right to furnish or transact telephone service for the public.

For the purpose of enabling the telegraph company to transact commercial telegraph business, the railroad company agrees to furnish upon the rights of way of the lines of railroad named in Schedule A the necessary poles, cross-arms and brackets to which the telegraph company may at its own cost and expense attach in the aggregate not exceeding twelve thousand (12,000) miles of wire, the telegraph company to furnish the said wire, and all necessary insulators therefor, and to make all renewals thereof, the railroad company agreeing to keep said poles in repair, and to furnish the necessary labor to keep said wires in ordinary repair, the telegraph company furnishing the necessary material and insulators therefor. The stringing, renewal and removal of said wires are to be so done as not to interrupt or interfere with the proper working of the railroad company's wires.

II. The telegraph company hereby agrees that it will during the period covered by this agreement efficiently transact a commercial telegraph business on and over the railroads of the said railroad companies. At such points as the railroad companies may elect from time to time, the operators of the railroad company will transact commercial telegraph business, acting as the agents, and conforming to the rules, regulations and instructions of the telegraph company in the transaction of such commercial telegraph business in so far as they do not conflict with the rules, regulations and in-

structions of the railroad company, said operators being paid by the railroad company.

III. The telegraph company shall determine all questions of tariff and shall fix all rates for said commercial telegraph business to and from offices on the telegraph lines of the railroad company, it being understood and agreed, however, that said rates shall in all cases be the same as the rates of other competing telegraph companies, except when the parties hereto shall mutually agree in writing to establish a higher or a lower rate.

IV. For the rights and privileges granted to the telegraph company by this agreement, it is agreed and stipulated that, in addition to all payments required by article VIII of this agreement, the railroad company shall also be entitled to receive payments, which the telegraph company shall make, as follows:

83 (1.) A sum equal to the total tolls and revenues derived from all such commercial telegraph business between railroad company's offices as shall be wholly conducted over wires supplied and owned by the railroad company, and transacted by such operators of the railroad company as shall also be agents of the telegraph company as provided in article II hereof.

(2.) A sum equal to fifty per centum (50%) (except as otherwise provided in section 4 of this article) of the total tolls and revenues derived from all commercial telegraph business (other than that specified in section one of this article), including market quotations, newspaper matter and transatlantic cable messages, whether originating at said railroad company's offices and destined to points beyond said railroad company's lines, or originating beyond said lines and destined to said railroad company's offices; or originating at or delivered from the offices or trains of the railroad company and delivered to the separate offices of the telegraph company upon said railroad company's lines, or originating at such separate offices of the telegraph company and destined to said railroad company's offices which shall remain after deducting from said total tolls the amount which said telegraph company shall be required to pay, or account for, to other connecting lines.

(3.) The telegraph company may maintain and operate independently of the railroad company the telegraph company's offices in the cities and towns named in Schedule B attached hereto, but it agrees that it will not during the continuance of this agreement operate in any other city or town on the lines of railroad of the railroad company an office independent of the railroad company, except with the approval of the railroad company.

It is further understood and agreed, however, that if the telegraph company shall not desire to maintain any or all of its offices now or hereafter established in any of said cities or towns named in Schedule B, it shall have the right to close any or all of said offices, provided, however, that if the telegraph company elects to maintain no offices in any of said cities or towns, it shall give the railroad company thirty (30) days' written notice of its intention to close its separate office or offices in said place. After the expiration of said

thirty days the commercial telegraph business shall be both transmitted and delivered through the railroad company's office or offices at said place in accordance with this agreement if the railroad company so desires and has the necessary facilities therefor, and
84 the telegraph company shall not re-establish an office in said city or town except upon the terms and conditions hereinabove set forth. The telegraph company agrees that it will not except with the approval of the railroad company establish in any of the cities or towns named in Schedule B an office independent of the railroad company within the immediate vicinity of any of the railroad company's stations or offices where commercial telegraph business is transacted under this agreement where the establishing of such office would be likely to detract from the receipts of said office of the railroad company.

(4.) It is further covenanted and agreed that at Jersey City, Philadelphia, Pittsburg, Washington, Baltimore, Harrisburg, and at such other points as may hereafter be agreed upon, the railroad company will furnish at its own expense in its main passenger station the necessary space, heat, and light for the proper accommodation of a telegraph office for the transaction of commercial telegraph business. At such offices the telegraph company will transact a commercial telegraph business at its own expense, paying as rental to the railroad company 40 % of the total tolls on all commercial telegraph business transacted at such offices after deducting the amount which the telegraph company shall be required to pay or account for to other connecting lines.

(5.) On or before the twentieth (20th) day of each month, statements shall be prepared showing all commercial telegraph business transacted under this agreement during the preceding calendar month where the revenue therefrom is to be divided between the railroad company and the telegraph company, and such revenue shall be divided between the parties hereto as hereinbefore provided, and any balance due from either party to the other paid within thirty (30) days thereafter.

V. The telegraph company shall and will at its own expense advertise such offices on the telegraph lines of said railroad company as may be agreed upon as aforesaid, as part of the telegraph company's general system, and shall also at its own expense furnish proper and suitable signs, message blanks and all other forms necessary for the proper transaction of the commercial telegraph business at said offices, and said railroad company agrees that said blanks and forms shall be used and signs displayed at all telegraph offices on its lines at which commercial telegraph business is transacted for the purpose of identifying the commercial telegraph business done at said offices with the said telegraph company's system.

85 VI. It is understood and agreed that the wires which the railroad company may assign for commercial telegraph business shall be connected into the main offices of the telegraph company at the telegraph company's expense wherever and whenever such connections are necessary or desirable for the efficient inter-

change of commercial telegraph business between the parties hereto. Where desired by the railroad company, the telegraph company will give the railroad company the free use of its pole lines or underground lines necessary to enable the railroad company's wires to be connected into the railroad company's offices located in the different cities on its lines or to connect the railroad company's wires into city offices of the telegraph company. The telegraph company agrees to furnish at its own expense the instruments, local batteries and operators necessary at its offices for the proper operation of the railroad company's wires so connected and when said wires terminate in offices of the telegraph company will furnish free the main battery necessary at such offices for the proper operation of said railroad company's wires so terminating. It is further understood and agreed that in the absence of other arrangements between the parties hereto, the interchange point for commercial telegraph business originating at such railroad company's offices and destined to points beyond the said railroad company's lines, or originating beyond said lines and destined to said railroad company's offices, shall be the telegraph office of the railroad superintendent of the division on which the business originates or to which it is destined.

VII. (1.) All messages of the officers, agents and employés of the railroad company pertaining to business of the railroad company between the railroad company's offices shall be transmitted on the wires used by the railroad company.

(2.) The telegraph company agrees to receive, and transmit, over its wires, and deliver, free of charge, for the railroad company during the continuance of this agreement, with promptness, efficiency and dispatch, all messages pertaining to the business of the Pennsylvania Railroad Company or any of the companies whose lines of railroad are included in Schedule A and covered by this agreement, or any messages relating to its business sent by an officer of any company embraced in said schedule, to and from all points on the land lines now or hereafter controlled by it up to the amount of $100,000.00 each year, computed at the regular tariff rates of the telegraph company between the points of origin and destination, the transmission of such messages to be
86 covered by franks or passes to be issued on the application of a duly authorized officer of the Pennsylvania Railroad Company, and the railroad company agrees to pay one-half the regular rates on such messages above the sum of $100,000.00 in each year, the railroad company hereby agreeing to hold harmless and indemnify the telegraph company against loss or damage of any kind arising from any error or failure in the transmission or delivery of messages sent free by the telegraph company for the railroad company under this agreement. Itemized monthly accounts shall be rendered by the telegraph company of such free and half rate messages.

(3.) The telegraph company agrees that, in addition to the free service to be performed by it, under section (2) of this article, it will receive and transmit cable dispatches on the business of any of said railroad companies to Europe and other foreign countries, aggregat-

ing at current rates the sum of one thousand dollars per annum, the railroad company agreeing to pay any excess on cable messages over that amount in each year.

(4.) The railroad company agrees to transport to and from regular stations, free of charge, over said lines of railroad embraced in this contract, the officers and employés of the telegraph company when engaged in building and repairing, equipping and operating the telegraph wires hereby authorized upon said railroads, and also to transport free of charge to regular stations over said railroads the material to be used in the building or repairing, equipping or operating of said telegraph wires herein authorized to be constructed, maintained, or operated on the railroads named in Schedule A, up to the sum of $20,000.00 per annum, but should such transportation exceed the sum of $20,000.00 per annum, the telegraph company shall pay the railroad company one-half its regular rates on all transportation above that sum, the telegraph company hereby agreeing that it will hold harmless and indemnify the said railroad company against all responsibility for damages, costs or expenses that may be incurred or recovered for any injury by accident or otherwise to any person or property so transported under the terms of this agreement. The transportation of employés of the telegraph company to be covered by passes or special tickets to be issued on the application of a duly authorized officer.

VIII. (1.) In consideration of the provisions of this agreement and the privileges hereinbefore granted by the railroad
87 company, the telegraph company agrees in addition to the other payments herein required to be made by it to pay as a rental to the railroad company, in monthly installments on the first day of each month in each and every year during the continuance of this agreement, the minimum sum of $60,000.00 per annum for the first five years from the date of this agreement, the minimum sum of $70,000.00 per annum for the second five years, and the minimum sum of $80,000.00 per annum for the third five years of the period of this agreement.

(2.) It is further covenanted and agreed in order that the railroad company may properly provide the necessary accommodation for the 12,000 miles of wire to which the telegraph company is entitled under this agreement, that the telegraph company shall and will furnish the railroad company a statement showing the number of wires amounting in the aggregate to 12,000 miles and between what points they desire to erect the same, and should the railroad company be unable to accommodate the designated number of wires between the points named on its present lines of poles it shall provide and locate such additional poles as may be necessary for this purpose. After the railroad company has provided the necessary pole accommodation for the said 12,000 miles of wires between the points designated by the telegraph company, no change in the location of said wires (except as provided in section XVI for the removal of said wires) shall be made without permission from the railroad company, and should the telegraph company desire more than

12,000 miles of wire on the poles of the railroad company and the railroad company be in position to provide for the same at a proper and reasonable cost with due regard to efficiency and economy of operation, the railroad company will furnish accommodation for such additional wires upon said poles, the telegraph company paying therefor a yearly rental of $4.00 per mile per wire and $2.00 per mile per wire per year for maintenance.

(3.) The telegraph company agrees that it will indemnify and save harmless the railroad company against any and all loss or damage to the property of the railroad company resulting from the construction, repair, reconstruction and maintenance of the telegraph company's wires upon the railroad company's rights of way and against all claims, payments, suits, judgments and sums of money accruing to any party against the railroad company for loss, damage or injury either to person or estate resulting from the acts or
88 negligence of the telegraph company, its servants or employés, in and about the construction, repair, reconstruction, maintenance and operation of the telegraph company's said wires upon the rights of way of the railroad company.

IX. The telegraph company hereby assumes all responsibility for damages arising from the fault of persons employed directly by it, and also agrees to save the railroad company harmless against any and all claims for loss or damage resulting from errors, delays or other defaults in the transacting of commercial telegraph business under this agreement, and expense in connection therewith, except that wherefrom the railroad company receives a sum equal to the total tolls and revenue as provided in section 1 of article IV hereof. The railroad company agrees that any such claims that may be brought against it shall be turned over to the telegraph company for defense, settlement or compromise as the telegraph company may elect, or that such claims, if defended, settled or compromised by the railroad company, shall be defended, settled or compromised subject to the approval of the telegraph company.

X. The telegraph company agrees not to use the premises of the railroad company for any purpose other than those specified in this agreement.

XI. The general terms and conditions of this agreement shall apply to all lines of railroad now or hereafter acquired or controlled by the railroad company as a part of its system east of Pittsburg and Erie, except so far as it may be inconsistent with existing contracts binding upon lines of railroad now controlled by the railroad company, and with contracts binding upon lines of railroad hereafter acquired by the railroad company and made before such acquisition. But should the railroad company hereafter acquire additional lines of railroad having contracts with the telegraph company, such lines of railroad shall, at the request of the railroad company, be brought under the general terms and provisions of this agreement.

XII. The railroad company shall have the right to the free use in connection with its general railroad telegraph business of any

patent rights, or new discoveries, or inventions that the telegraph company now owns, uses, or controls in its general telegraph businesss, or which it may hereafter own, use, or control as aforesaid.

XIII. It is understood and agreed that all commercial telegraph business transacted in the stations and offices, and delivered from the trains of the railroad company for the public shall come
89 within the terms of this agreement and subject to the provisions thereof.

The division of tolls under existing agreements between the telegraph company and connecting companies is shown on Schedule C hereto annexed. It is understood and agreed that the division of tolls specified in any future agreements between the telegraph company and other parties shall be subject to the approval of the railroad company in so far as said division of tolls reduces the percentage to the railroad company under this contract of total tolls on any commercial telegraph business transacted by the telegraph company under said future agreements.

XIV. In the event of interruption at any point to all of the wires of the railroad company it is understood and agreed that the railroad company shall have the free use of one of the telegraph company's working wires until at least one of the railroad company's wires has been restored to working order.

XV. Should the railroad company hereafter determine that the safe, efficient and economical management of the telegraph wires upon its lines requires that the same should be placed in conduits and the poles be removed from its right of way, and the same can be done without impairing the efficiency of the service performed by the telegraph company for the public, it shall have the right to so arrange for placing the wires of the telegraph company either in separate conduits or in conduits jointly with the wires of the railroad company, but should such determination not be satisfactory to the telegraph company, or should the parties hereto be unable to agree upon an equitable basis of compensation to be paid by the telegraph company for such facilities, or upon any modifications in this contract which may be necessitated thereby, any differences existing between said parties in reference thereto shall be determined by the arbitration of three competent and disinterested parties, one to be appointed by each, and the two so appointed to elect a third, and the decision of a majority thereof to be final.

XVI. This agreement shall be in full force and effect for the term of fifteen (15) years from the first day of July, 1902, and shall then absolutely terminate without notice unless at least one year before such first day of July, 1917, provision shall have been made for its extension by the written agreement of the parties hereto.

It is understood and agreed that the telegraph company shall have the right at any time during the life of this agreement to remove any part or all of its said wires erected upon the rights
90 of way of the railroad company under the terms of this agreement. If however the wire thus removed is a portion of the original 12,000 miles, the railroad company shall not be required

to make provision for its attachment elsewhere. At the expiration of this agreement the telegraph company shall remove within three months thereafter all of its wires and fixtures then erected upon the railroad company's rights of way, and if not so removed the railroad company may remove them at the expense of the telegraph company; or the railroad company shall have the right to purchase from the telegraph company all or any portion of said wires and fixtures at their then value, to be determined by arbitration as provided in article XV if the parties hereto cannot agree upon the same.

In witness whereof the parties hereto have caused these presents to be signed and their corporate seals to be hereunto affixed and attested by their respective officers, duly authorized so to do, the day and year first above written.

POSTAL TELEGRAPH-CABLE COMPANY,
By WM. H. BAKER, *Vice-President.*

[Corporate Seal.]

Attest: CHAS. P. BRUCH, *Ass't Secretary.*

THE PENNSYLVANIA RAILROAD COMPANY,
By A. J. CASSATT, *President.*

[Corporate Seal.]

Attest: LEWIS NEILSON, *Secretary.*

91 SCHEDULE A.

United Railroads of New Jersey Division.

From—	To—	Miles.	
Main line and branches:			
Phila. (35th St. Jc.), Pa.	Jersey City, N. J.	87.14	
Phila. (Frankford), Pa.	Phila. (Kensington), Pa.	2.84	
Trenton, N. J.	Bordentown, N. J.	6.10	
Princeton Jc., N. J.	Princeton, N. J.	3.11	
Monmouth Jc., N. J.	Jamesburg, N. J.	5.59	
Metuchen, N. J.	Bonhampton, N. J.	1.89	
Newark (Market St.), N. J.	Harrison, N. J.	1.47	
Jersey City (Bergen Hill), N. J.	Jersey City (Harsimus Cove), N. J.	1.55	
			109.69
Camden & Amboy R. R. and branch:			
Camden, N. J.	South Amboy, N. J.	61.22	
Florence, N. J.	Wood's iron works, N. J.	2.17	
			63.39
Perth Amboy and Woodbridge R. R.:			
Rahway (P. A. & W. Jc.), N. J.	Perth Amboy, N. J.		6.40
Millstone and New Brunswick R. R.:			
Millstone Jc., N. J.	East Millstone, N. J.		6.64

From—	To—	Miles.	
Rocky Hill R. R. and Kingston Branch United railroads:			
Monmouth Jc., N. J.	Rocky Hill, N. J.		6.54
Belvidere Delaware R. R. and branches:			
Trenton, N. J.	Manunka Chunk, N. J.	67.49	
Trenton (Coalport), N. J.	Trenton (Millham Jc.), N. J.	1.11	
Trenton (Coalport), N. J.	East Trenton, N. J.	1.67	
Lambertville, N. J.	Flemington, N. J.	11.55	
Martin's Creek, N. J.	Jc. with Bangor & Port. R. R.	0.29	
			82.11
Connecting railway lines:			
Phila. (Engleside), Pa.	Phila. (Thompson St.), Pa.	0.17	
Phila. (Germantown Jc.), Pa.	Phila. (Chestnut Hill), Pa.	6.75	
Phila. (Midvale Jc.), Pa.	Phila. (Midvale steel works), Pa.	0.85	
Phila. (3-10 m. east of Allen lane)	Fort Washington, Pa.	6.27	
Phila. (6-10 m. east of N. Penn Jc.)	Phila. (Cambria & "B" Sts.)	0.78	
Phila. (6-10 m. east of N. Penn Jc.)	Phila. (Oxford road), Pa.	3.55	
Phila. (Tioga St. Sta.), Pa.	Phila. (Jc. P. & T. R. R. east of Tacony), Pa.	5.13	
Phila. (Erie and Trenton Aves.), Pa.	Phila. (Frankford St.), Pa.	1.78	
Phila. (Holmesburg Jc.), Pa.	Phila. (Bustleton), Pa.	4.16	
			29.44
Delaware River R. R. and bridge and branches:			
Phila. (Frankford Jc.)	Pensauken Jc., N. J.	4.82	
East side Dela. Riv. near Delair, N. J.	Fish house, N. J.	0.69	
East side Dela. Riv. near Delair, N. J.	Morris Jc., N. J.	0.90	
Merchantville Jc., N. J.	Haddonfield Jc., N. J.	3.86	
			10.27
New York Bay R. R. and branches:			
Waverly (8-10 m. east of), N. J.	Crossing of Newark & Elizabeth Br. of C. R. R. of N. J.	2.20	
Waverly (8-10 m. east of), N. J.	Meadows yard, N. J.	4.36	
Newark (1-10 m. east of Man'f'rs R. R.), N. J.	Newark (Lister's Agl. Chem. Wks.), N. J.	0.67	
Newark (Passaic river), N. J.	Newark (terminus), N. J.	0.16	
Newark (½ m. west of Emmet St.), N. J.	Newark (18th avenue), N. J.	2.05	
			9.44
92 Freehold & Jamesburg Agricultural R. R.:			
Jamesburg, N. J.	Sea Girt, N. J.		27.54
Columbus, Kinkora & Springfield R. R.:			
Kinkora, N. J.	New Lisbon, N. J.		10.84
Camden & Burlington County R. R. and branch:			
Camden (Pavonia), N. J.	Pemberton, N. J.	22.46	
Burlington, N. J.	Mt. Holly, N. J.	7.15	
			29.61

From—	To—	Miles.	
Mt. Holly, Lumberton & Medford R. R.:			
Mt. Holly, N. J.	Medford, N. J.		5.95
Vincentown Branch R. R.:			
Evansville, N. J.	Vincenton, N. J.		2.84
Philadelphia & Long Branch R. R. and branches:			
Birmingham, N. J.	Bay Head Jc., N. J.	46.09	
New Lisbon (1 7-10 m. east of), N. J.	Brown's Mills - in - the-Pines, N. J.	1.80	
Island Heights Jc., N. J.	Island Heights, N. J.	1.18	
			49.07
Philadelphia & Beach Haven R. R.:			
Manahawkin, N. J.	Beach Haven, N. J.		12.09
Barnegat R. R.:			
Barnegat City Jc., N. J.	Barnegat, N. J.		7.73
Pennsylvania Railroad Division.			
Main line and branches:			
Phila. (Broad St. Sta.), Pa.	Pittsburg, Pa.	352.15	
West Phila., Pa.	Dock St., Phila., Pa.	7.84	
Pollock and Swanson Sts., Phila., Pa.	Swanson and Morris Sts., Phila., Pa.	1.22	
Hamburg Jc., Phila., Pa.	Girard Pt. and Pt. Breeze, Phila.	2.06	
Haverford St., West Phila., Pa.	South St., West Phila., Pa.	1.70	
Girard Point, Phila., Pa.	Eleventh St., Phila., Pa.	1.49	
Frazer, Pa.	West Chester, Pa.	6.82	
Glen Loch, Pa.	Morrisville, Pa.	45.64	
Conestoga Jc., Pa.	Dillerville Jc., Pa.	2.42	
Dillerville Jc., Pa.	Branch Int., via Columbia, Pa.	29.50	
Columbia, Pa.	South Columbia, Pa.	0.53	
Tyrone, Pa.	Vail, Pa.	3.15	
Lilly, Pa.	Coal mines, Pa.	2.12	
Ben's Creek, Pa.	Coal mines, Pa.	1.61	
Sonman, Pa.	Terminus, Pa.	0.77	
Portage, Pa.	Coal Tipple, Pa.	3.63	
Ben's Creek, Pa.	Summerhill, Pa.	0.60	
Summerhill, Pa.	South Fork, Pa.	2.03	
Conemaugh, Pa.	Johnstown, Pa.	1.60	
Donohoe, Pa.	Crabtree, Pa.	8.12	
Jeannette, Pa. (Brush Cr. Br.)	Terminus, Pa.	0.54	
Jeannette, Pa. (Bull Run Br.)	Terminus, Pa.	0.71	
Manor, Pa.	Claridge, Pa.	4.30	
Irwin, Pa.	Gratztown, Pa.	10.19	
Stewart, Pa.	Export, Pa.	10.86	
Saunders, Pa.	Terminus, Pa.	3.87	
Stewart, Pa.	Carnegie's Union R. R., Pa.	5.90	
Fifty-second St., W. Phila., Pa.	Pottsville, Pa.	91.58	
West Manayunk, Pa.	Pencoyd, Phila., Pa.	1.28	
Phœnixville, Pa.	Frazer, Pa.	10.65	
Court St., Reading, Pa.	Sixth St., Reading, Pa.	0.98	
Pottsville, Pa.	Primrose, Pa.	7.49	
			623.35

From—	To—	Miles.	
93 Downington & Lancaster R. R.:			
Downington, Pa.	Conestoga Jc., Pa.		37.58
Pomeroy & Newark R. R.:			
Pomeroy, Pa.	Newark (Jc. with P. W. & B. R. R.), Del.		26.70
Lancaster & Reading Narrow Gauge R. R.:			
Lancaster, Pa.	Quarryville, Pa.		15.21
Bedford & Bridgeport Ry.:			
Mt. Dallas, Pa.	Pa. and Md. State line	38.70	
Bedford, Pa.	Holderbaum, Pa.	10.47	
			49.17
Lewisburg & Tyrone R. R. (P. R. R. portion):			
Tyrone, Pa.	Fairbrook, Pa.	19.90	
Fairbrook, Pa.	Scotia, Pa.	5.30	
Juniata Jc., Pa.	Juniata, Pa.	2.08	
			27.28
Bald Eagle Valley R. R. (P. R. R. portion):			
Vail, Pa.	Lock Haven, Pa.	51.20	
Snow Shoe intersection, Pa.	Per Se, Pa.	22.22	
Sugar Camp Jc., Pa.	Lehigh Val. Coal Co.'s mine, Pa.	4.72	
Grauer Branch Jc., Pa.	Terminus, Pa.	2.05	
Milesburg, Pa.	Bellefonte, Pa.	2.99	
			83.18
Tyrone & Clearfield Ry.:			
Vail, Pa.	Grampian, Pa.	49.63	
Osceola Jc. (Osceola Br.), Pa.	Terminus, Pa.	0.78	
Osceola Jc. (Moshannon Br.), Pa.	Terminus, Pa.	11.98	
Big Run Jc., Pa.	Terminus, Pa.	2.43	
Moshannon and Clearfield Jc., Pa.	Terminus, Pa.	8.81	
Beaver Jc., Pa.	Coal mines, Pa.	0.83	
Leskie Jc., Pa.	Leskie colliery, Pa.	1.32	
Barnes Jc., Pa.	Terminus, Pa.	0.74	
Ednie Jc., Pa.	Terminus, Pa.	0.34	
Forsyth Jc., Pa.	Terminus, Pa.	0.39	
Coal Run Jc., Pa.	Coal mines, Pa.	3.96	
Morgan Run Jc., Pa.	Coal mines, Pa.	4.05	
Goss Run Jc., Pa.	Coal mines, Pa.	1.91	
Goss Run Jc., No. 2, Pa.	Coal mines, Pa.	1.56	
Goss Run Jc., No. 3, Pa.	Coal mines, Pa.	1.26	
Houtzdale Jc., Pa.	Coal mines, Pa.	0.74	
Amesville Jc., Pa.	Coal mines, Pa.	2.39	
Amesville Branch Ext. Jc., Pa.	Coal mines, Pa.	2.08	
Amesville Branch No. 3 Jc., Pa.	Coal mines, Pa.	2.39	
Kendrick Jc., Pa.	Terminus, Pa.	0.70	
Madera Jc., Pa.	Coal mines, Pa.	8.44	
Little Muddy Run Jc., Pa.	Terminus, Pa.	3.08	
Muddy Run Jc., Pa.	Terminus, Pa.	3.35	
Smoke Run Jc., Pa.	Terminus, Pa.	0.99	
Banian Jc., Pa.	Coal mines, Pa.	2.66	
Pine Run Jc., Pa.	Coal mines, Pa.	4.90	
Beulah Jc., Pa.	Coal mines, Pa.	0.54	
Mapleton Jc., Pa.	Coal mines, Pa.	3.20	

From—	To—	Miles.	
Mapleton Jc., No. 2, Pa.	Coal mines, Pa.	2.24	
Mapleton Jc., No. 3, Pa.	Columbia colliery, Pa.	0.92	
Philipsburg, Pa	Morrisdale, Pa.	3.49	
Derby Jc., Pa	Coal mines, Pa.	1.19	
Graham Jc., Pa	Coal mines, Pa.	1.58	
Liveright Jc., Pa.	Terminus, Pa.	0.97	
Grampian, Pa	Terminus, Pa.	1.62	
Betz Jc., Pa.	Terminus, Pa.	1.70	
			139.16
Tipton R. R.:			
Tipton, Pa.	Tipton Run coal mines, Pa.		4.44
94 Pennsylvania & North Western R. R.:			
6-10 m. west of Bellwood, Pa.	Horatio, Pa.	61.44	
Tigart, Pa	Max Frick's mines, Pa.	2.16	
Glasgow, Pa.	Beccaria mine, Pa.	0.93	
Irvona, Pa.	Bratton's Mills, Pa.	3.86	
Punxsutawney, Pa.	Berwind White mine, Pa.	5.57	
Anita, Pa.	Schaller mine, Pa.	1.40	
Horatio, Pa.	Fordham, Pa.	3.28	
			78.64
Hollidaysburg, Morrison's Cove, etc., branches:			
Altoona, Pa.	Hollidaysburg, Pa.	7.30	
Duncansville, Pa.	Portage iron works, Pa.	0.60	
Hollidaysburg, Pa.	Henrietta, Pa	18.90	
Roaring Spring, Pa.	Ore Hill, Pa.	3.00	
Martinsburg Jc., Pa.	Martinsburg, Pa.	0.70	
Morrison's Cove Jc., Pa.	Petersburg Jc., Pa.	31.61	
Canoe Creek Jc., Pa.	Moore's Mill, Pa.	2.62	
Crissman Jc., Pa.	Terminus, Pa.	1.24	
Clapper Jc., Pa.	Terminus, Pa	0.76	
Springfield Jc., Pa.	Oreminea, Pa.	8.20	
Clover Creek Jc., Pa.	Clover Creek quarries, Pa.	2.38	
"Y" switches, Pa.	Newry, Pa.	3.00	
			80.31
Cambria & Clearfield Ry.:			
Cresson, Pa.	Hoover's Mill Jc., Pa.	49.59	
Kaylor, Pa.	Ebensburg, Pa.	4.81	
Bradley Jc., Pa.	Cherry Tree, Pa.	17.61	
Carrolltown Road, Pa.	Coal mines, Pa.	0.63	
Spangler (Sterling Jc.), Pa.	Coal mines, Pa.	1.86	
Spangler (Lantzy Jc.), Pa.	Coal mines, Pa.	0.55	
Barnesboro (Walnut Run Jc.), Pa.	Coal mines, Pa	2.25	
Barnesboro (Porter Run Jc.), Pa	Coal mines, Pa.	1.68	
Barnesboro (Gardner Run Jc.), Pa.	Coal mines, Pa.	1.23	
Patton (Patton Jc., No. 1), Pa	Coal mines, Pa.	1.24	
Patton (Patton Jc., No. 2), Pa.	Coal mines, Pa.	2.16	
Patton Jc., No. 3, Pa.	Coal mines, Pa.	3.00	
Patton (Patton Jc., No. 4), Pa.	Coal mines, Pa.	0.46	
Garway, Pa.	Mitchell's mines, Pa.	5.81	
Welshdale, Pa.	Coal mines, Pa.	1.52	
St. Lu Jc., Pa.	Coal mines, Pa.	0.43	
La Jose Jc., Pa.	La Jose, Pa.	0.55	
Cush Creek Jc., Pa.	Terminus, Pa.	1.55	
Glen Campbell Jc. (McCoy's Run branch)	Coal mines, Pa.	2.19	
Glen Campbell Jc. (Whitehead branch)	Coal mines, Pa	0.59	
Glen Campbell Jc. (Brady's Run branch)	Coal mines, Pa.	0.78	

From—	To—	Miles.	
Glen Campbell Jc. (Glen Campbell branch)	Coal mines, Pa	1.46	
Glen Campbell Jc. (Hoover's Mill branch)	Hoover's Mill, Pa	0.34	
Glen Campbell Jc. (Suter branch)	Coal mines, Pa	0.37	
			102.66
Ebensburg & Black Lick R. R.:			
Ebensburg, Pa	Dilltown, Pa	18.93	
Twin Rocks, Pa	Terminus, Pa	1.10	
¾ m. east of Vintondale, Pa	Black Lick coal mines, Pa.	0.85	
			20.88
Cresson & Irvona R. R.:			
Cresson, Pa	Irvona, Pa	26.67	
Condron, Pa	Coal mines, Pa	1.52	
Flinton, Pa	Kreamer's saw mill, Pa	0.85	
Coalport, Pa	Coal mines, Pa	0.50	
			29.54
South Fork R. R.:			
South Fork, Pa	Ashtola, Pa	20.71	
Lovett Station, Pa	Lloydell, Pa	4.05	
2-10 m. north of Lovett, Pa	Llanfair, Pa	5.26	
Eureka No. 30 Jc., Pa	Eureka No. 37 Mine, Pa	1.45	
Eureka No. 30 Jc., Pa	Eureka No. 39 Mine, Pa	6.80	
95 **South Fork R. R.—Continued:**			
Paint Creek Jc., Pa	Eureka Mine, No. 30, Pa.	1.64	
28-100 m. north of Windber, Pa	Eureka Mine, No. 31, Pa.	0.74	
7-100 m. south of Windber, Pa	Eureka Mine, No. 35, Pa.	0.76	
60-100 m. south of Windber, Pa	Eureka Mine, No. 36, Pa.	1.00	
22-100 m. south of Windber, Pa	Eureka Mine, No. 32, Pa.	0.78	
1 59-100 m. south of Windber, Pa	Eureka Mine, No. 34, Pa.	0.35	
4 60-100 m. south of Windber, Pa	Curry Mill, Pa	1.40	
			44.94
Indiana branch:			
Blairsville intersection, Pa	Indiana, Pa	18.91	
Tearing Run Jc., Pa	Terminus, Pa	0.83	
Homer and Cherrytree Jc., Pa	Terminus, Pa	0.45	
			20.19
Western Pennsylvania R. R.:			
Bolivar, Pa	Allegheny City, Pa	77.22	
Butler Jc., Pa	Butler, Pa	21.05	
Bolivar Jc., Pa	Dornock Point, Pa	16.53	
Blairsville, Pa	Terminus, Pa	1.50	
Jc. 1¼ m. west of Saltsburg, Pa	Terminus, Pa	0.77	
5 7-10 m. west of Saltsburg, Pa	Terminus, Pa	2.11	
Apollo Jc., Pa	Beale's quarry, Pa	1.98	
Anderson Jc., Pa	Hill Junction, Pa	2.57	
Schenley Jc., Pa	Allegheny Valley R. R., Pa.	5.05	
Bailey's Run Jc., Pa	Terminus, Pa	0.30	
			129.08
South West Pennsylvania Ry.:			
Greensburg, Pa	Fairchance, Pa	44.79	
Latrobe, 45-100 m. west of Pa	Whitney Branch Jc., Pa.	3.88	
Lippincott Branch Jc., Pa	Terminus, Pa	1.49	
Whitney Branch Jc., Pa	Terminus, Pa	1.75	
Huff's Station, Pa	Radebaugh, Pa	3.95	
Hempfield Branch Jc., Pa	Terminus, Pa	11.64	
Andrews Run Jc., Pa	Terminus, Pa	1.72	
Youngwood, Pa	Trauger, Pa	7.87	

From—	To—	Miles.	
Boyer Run Jc., Pa.	Terminus, Pa.	1.82	
Brinker Run Jc., Pa.	Terminus, Pa.	2.10	
Shoup, Pa.	Mammoth, Pa.	2.37	
Bessemer Jc., Pa.	Bessemer coke ovens, Pa.	1.65	
Hunker (Hunker Branch Jc.), Pa.	Terminus, Pa.	1.21	
Hunker (Westmoreland Br. Jc.), Pa.	Terminus, Pa.	0.43	
Ruffsdale Jc., Pa.	Terminus, Pa.	1.24	
Tarr Station, Pa.	Terminus, Pa.	0.65	
Alverton (Stoneville Br. Jc.), Pa.	Terminus, Pa.	1.51	
Scottdale-Overton (Scottdale Br. Jc.).	Junebug branch, Pa.	1.87	
Junebug Jc. with Scottdale Br., Pa.	Jc. with Morewood branch, Pa.	1.20	
Schoonmaker Jc. with Junebug Br., Pa.	Terminus, Pa.	0.46	
Junebug Branch, Pa.	Morewood, Pa.	1.73	
Texas Jc. with Junebug Br., Pa.	Terminus, Pa.	4.98	
Everson Pa.	Youghiogheny (No. R. R.) Pa.	1.92	
New Haven, Pa.	Monarch, Pa.	5.87	
Watt (5-10 m. north of), Pa.	Terminus, Pa.	1.18	
Watt, Pa.	Terminus, Pa.	1.12	
Dunbar (6-10 m. south of), Pa.	Terminus, Pa.	0.38	
Uniontown (3-10 m. north of), Pa.	Ache Jc., Pa.	8.07	
Rainey Jc., Pa.	Terminus, Pa.	2.44	
Shamrock Jc.	Terminus, Pa.	1.32	
Oliphant (6-10 m. south of), Pa.	Terminus, Pa.	1.71	
Wynn Jc., Pa.	Terminus, Pa.	0.26	
			124.58
Pittsburgh, Virginia & Charleston Ry.:			
Pittsburgh (South Side), Pa.	West Brownsville, Pa.	53.20	
23d St., Pittsburgh (S. side), Pa.	Fifth St., Pittsburg (S. side).	1.73	
Hays Station, Pa.	Harrison coal works, Pa.	0.78	
Cochran (2-10 m. south of), Pa.	McKeesport, Pa.	1.52	
Peters Creek, Pa.	Terminus, Pa.	5.33	
West Brownsville Jc., Pa.	Redstone Jc., Pa.	16.56	
Brownsville Branch Jc., Pa.	Brownsville, Pa.	1.00	
Keister Jc., Pa.	Terminus, Pa.	1.34	
96 Pittsburgh, Virginia and Charleston Ry.—Continued:			
Vance's Mill Jc., Pa.	Bute, Pa.	2.91	
Bute Run Jc., Pa.	Taylor & Fulton Coke Wks., Pa.	1.33	
Gates, Pa.	Riverview, Pa.	5.60	
Huron, Pa.	Edenborn, Pa.	3.49	
Gates, Pa.	Lambert, Pa.	3.03	
Cat's Run Jc., Pa.	Griffen, Pa.	1.20	
			99.02
Port Perry branch:			
East Pittsburgh, Pa.	Thomson, Pa.	1.32	1.32
Monongahela & Washington R. R.:			
Monongahela City, Pa.	Terminus, Pa.		14.29
Masontown & New Salem R. R.:			
Moser Run Jc., Pa.	Buffington, Pa.		6.04

Philadelphia & Erie Railroad Division.

From—	To—		Miles.
Main line and branches:			
Sunbury, Pa.	Erie, Pa.	287.56	
Queen's Run (1–10 m. east of), Pa.	Terminus, Pa.	3.60	
Williamsport (Allen's), Pa.	Nisbet, Pa.	7.39	
Newburry (7–10 m. east of), Pa.	Williamsport (Market St.)	1.93	
Williamsport (Third St. Jc.), Pa.	Loyalsock creek, Pa.	2.63	
Williamsport (Hepburn St.)	Williamsport (3d St. cross.)	1.22	
Williamsport (Park St.)	Williamsport (Rose St.)	0.47	
		4.32	
			304.80
Johnsonburg railroad and branch:			
Johnsonburg, Pa.	Clermont, Pa.		19.69
Ridgway & Clearfield R. R.:			
Ridgway, Pa.	Falls creek, Pa.		27.23
Bald Eagle Valley R. R. (B. N. & L. branch, P. & E. portion):			
Lemont (Jc. L. & T. R. R.), Pa.	Bellefonte, Pa.		9.45
Lewisburg & Tyrone R. R. (P. & E. portion):			
Montandon, Pa.	Lemont (Jc. with B. E. V. R. R.), Pa.		57.84
Pennsylvania railroad:			
Sunbury, Pa.	Tomhicken, Pa.	43.44	
Catawissa, Pa.	Wilkesbarre, Pa.	43.13	
Nanticoke, Pa.	Glen Lyon, Pa.	4.69	
Nanticoke, Pa.	West Nanticoke, Pa.	0.61	
Rock Glen Jc. (S. H. & W. Ry.), Pa.	Nescopeck, Pa.	11.96	
Pottsville, Pa.	New Boston Jc. (L. V. R. R.), Pa.	9.86	
Morea, Pa.	Morea Breaker, Pa.	1.00	
Frackville, Pa.	Shenandoah, Pa.	4.98	
Shenandoah (8–10 m. east of), Pa.	William Penn colliery, Pa.	2.54	
Selinsgrove Jc., Pa.	Lewistown Jc., Pa.	44.74	
Lewistown, Pa.	Milroy, Pa.	11.14	
			178.09

Buffalo & Allegheny Valley Division.

Allegheny Valley Ry. main lines:			
Pittsburg	Oil City	132.50	
Red Bank	Driftwood	109.70	
			242.20
Indian Run branch:			
New Kensington, Pa.	Parnassus, Pa.	1.31	1.31
Plum Creek branch:			
Verona	Plum Creek	6.80	6.80
Sligo branch:			
Lawsonham	Sligo	10.20	10.20

97 *Northern Central Railway Lines.*

From—	To—	Miles.	
Main line and branch:			
Sunbury, Pa.	Dauphin, Pa.	45.31	
Marysville, Pa.	Baltimore, Md.	91.51	
		136.82	
Hollis, Md.	Green Spring Jc., Md.	8.59	
			145.41
Elmira & Lake Ontario R. R. and branches:			
Canandaigua, N. Y.	Chemung Jc. (Erie R. R.), N. Y.	64.00	
Canandaigua, N. Y.	Canandaigua Lake, N. Y.	1.43	
Stanley, N. Y.	Sodus Point, N. Y.	34.18	
			99.61
Elmira & Williamsport, R. R.:			
Southport Jc. (Erie R. R.), N. Y.	Williamsport, Pa.		75.50
Shamokin Valley & Pottsville R. R. and branches:			
Sunbury, Pa.	Mt. Carmel, Pa.	27.30	
Lancaster Jc. (1 4-10 m. east of Shamokin)	Hickory Ridge colliery, Pa.	2.48	
Scott Jc., Pa.	Scott breaker, Pa.	2.84	
Green Ridge Jc., Pa.	Union Coal Co.'s store, Pa.	1.49	
Fagley Jc., Pa.	Terminus, Pa.	1.55	
Richards Jc., Pa.	Richards colliery, Pa.	1.54	
Mt. Carmel (Montelius Jc.), Pa.	Mt. Carmel breaker (east of), Pa.	1.22	
			38.42
Lykens Valley R. R.:			
Millersburg, Pa.	Williamstown (4-10 m. west of), Pa.		19.29
Rockville branch, P. R. R.:			
Dauphin, Pa.	Rockville, Pa.		2.82
York branch, P. R. R.:			
Columbia, Pa.	York, Pa.		12.88
York, Hanover & Frederick R. R.:			
York, Pa.	Frederick, Md.		55.65
Union R. R.:			
Baltimore (Cen. of North St.), Md.	Bay View Jc. (P. W. & B. R. R.), Canton & Colgate creek, Md.		9.65

Philadelphia, Wilmington & Baltimore Railroad and Operated Lines.

From—	To—	Miles.
Main line and branches:		
Phila. (Broad and Prime Sts.), Pa.	Baltimore (President St.), Md.	94.47
Phila. (Jc. with Junc. R. R.), Pa.	Phila. (Gray's Ferry station), Pa.	0.20
Perryville (P. W. & B. Jc.), Md.	Perryville (C. & P. D. Ry. Jc.), Md.	0.32
Bayview (P. W. & B. Jc.), Md.	Bayview (Union R. R. Jc.), Md.	0.06

From—	To—	Miles.	
Phila. (Broad and Wash. Ave.), Pa....	Phila. (Del. Riv. & Wash. Ave.)	1.37	
Phila. (Wash. Ave. and Swanson St.), Pa.	Phila. (Swanson and Almond Sts.)	0.34	
Penna. and Delaware State line.....	Naaman's creek, Del.....	0.72	
Edgemoor, Del.....	Newport (north of), Del.	4.82	
Landlith (Wilmington), Del.....	Wilmington (Augustine's mill).	2.14	
Wilmington (West Yard Jc.), Del.....	Shellpot Branch crossing and Jc. with Delaware R. R., Del.	0.97	
Newark, Del.....	Delaware City, Del.. ...	11.79	
			117.20
Junction railroad:			
Phila. (Belmont Jc., P. & R. R. R.)...	Phila. (Gray's ferry), Pa.....		3.62
South Chester railroad and branches:			
Chester (Howell St.), Pa.....	Penna. and Delaware State line.	2.72	
Lamokin, Pa	Lamokin (Jc. with So. Ches. R. R.)	0.49	
Linwood, Pa.....	Marcus Hook, Pa.....	0.55	
			3.76
Elkton & Middletown railroad:			
Elkton, Md.....	Big Elk river, Md.		0.33
Columbia & Port Deposit railway:			
South Columbia, Pa.....	Perryville, Md.....		42.68
98 Baltimore & Potomac railroad and branches:			
Baltimore, Md.....	Bowie, Md.....	24.40	
Bowie, Md.....	Pope's Creek, Md.....	48.70	
Bowie, Md.....	So. end Long bridge, opposite Washington, D. C., Va.	18.90	
Loudon Park, Md.....	Clermont stock yards, Md.	1.20	
			93.20
Washington Southern Railway branch:			
So. end Long bridge, opposite Washington, D. C.	Roslyn, Va		3.18
Philadelphia & Baltimore Central railroad and branches:			
Phila. (31st and Chestnut Sts.), Pa	Wawa, Pa	16.77	
Wawa, Pa	Octoraro Jc. (C. & P. D. R. R.), Md.	45.83	
Wawa, Pa.....	West Chester, Pa.....	9.43	
Brandywine Summit, Pa.....	Kaolin works, Pa	1.63	
			73.66
Philadelphia & Delaware County railroad:			
Fernwood, Pa	Newton Square, Pa.....	9.93	
Cardington Jc., Pa.....	Millbourne Mills, Pa.....	1.96	
			11.89

From—	To—	Miles.	
Chester Creek R. R.:			
Lenni, Pa	Lamokin, Pa		6.69
Delaware railroad:			
Shellpot crossing (Jc. with P. W. & B. R. R.), Del.	Delmar, Del. & Md	95.22	
Shellpot Branch Jc., Del	New Castle, Del	5.45	
Townsend, Del	Centreville, Md	35.15	
Clayton, Del	Smyrna, Del	1.29	
Clayton, Del	Oxford, Md	54.30	
Seaford, Del	Cambridge, Md	32.97	
			224.38
Smyrna & Delaware Bay R. R.:			
Clayton, Del	Del. and Md. State line		6.95
Baltimore & Delaware Bay R. R.:			
Del. and Md. State line	Chestertown, Md	22.92	
Worton, Md	Nicholson, Md	3.72	
			26.64
Delaware, Maryland & Virginia railroad:			
Harrington, Del	Rehoboth, Del	43.57	
Georgetown, Del	Franklin City, Va	53.96	
			97.53

West Jersey & Seashore Railroad Lines.

From—	To—	Miles.	
Main lines and branches:			
Camden, N. J	Cape May, N. J	80.92	
Camden, N. J	Atlantic City, N. J	58.73	
Woodbury, N. J	Salem, N. J	28.39	
Salem (branch in), N. J	Salem, N. J	1.27	
Elmer, N. J	Riddleton Jc., N. J	10.38	
Alloway Jc., N. J	Quinton, N. J	4.22	
Glassboro, N. J	Bridgeton, N. J	19.68	
Bridgeton (Main St.), N. J	Bridgeton (Pearl and Lemon Sts.) N. J.	1.67	
Manumuskin, N. J	Maurice river, N. J	9.76	
Newfield, N. J	Atlantic City (Atl. City Div. Jc.) N. J.	32.60	
Pleasantville, N. J	Somers' Point, N. J	7.14	
Sea Isle Jc., N. J	Ocean City, N. J	16.47	
Sea Isle City, N. J	Stone Harbor, N. J	9.14	
Anglesea Jc., N. J	Holly Beach, N. J	7.24	
Absecon inlet, N. J	Atlantic City (Seaview excursion house), N. J.	3.04	
Atlantic City (Seaview excursion house).	Longport, N. J	5.67	
Atlantic City (W. J. & S. Jc. at Drawbridge), N. J.	Atlantic City (Providence Ave. south of Chelsea), N. J.	1.23	
Haddonfield, N. J	Medford, N. J	11.98	
			309.53
99 Delaware River R. R.:			
Woodbury, N. J	Pennsgrove, N. J		19.99

Cumberland Valley Railroad Lines.

From—	To—	Miles.
Main line:		
Harrisburg, Pa.	Potomac river (Powell's Bend)	82.20
Cumberland Valley & Martinsburg R. R.:		
Potomac river	Winchester, Pa.	33.65
Dillsburg & Mechanicsburg R. R.:		
Mechanicsburg (Dillsburg Jc.)	Dillsburg, Pa.	7.70
Mont Alto R. R.:		
Mont Alto Jc., Pa.	Waynesboro, Pa.	18.20
Southern Pennsylvania R. R.:		
Marion (C. V. R. R. Jc.), Pa.	Richmond, Pa.	21.40

Revised Summary.

(Excluding lines which have unexpired contracts.)

	Miles.
United Railroads of New Jersey division	469.59
Pennsylvania Railroad division	1,757.56
Philadelphia & Erie Railroad division	597.10
Buffalo & Allegheny Valley division (Western New York and Pennsylvania excluded)	260.51
Northern Central Railway line	459.23
Philadelphia, Wilmington & Baltimore R. R., and operated lines	711.71
West Jersey & Seashore Railroad lines	329.52
Cumberland Valley Railroad lines	163.15
Total	4,748.37

SCHEDULE B.

Washington D. C.

Bridgeville, Del.
Dover, Del.
Edge Moor, Del.
Harrington, Del.
Laurel, Del.
Seaford, Del.
Smyrna, Del.
Wilmington, Del.

Baltimore, Md.
Canton, Md.
Conowingo, Md.
Cumberland, Md.
Frederick, Md.
Union Stock Yards, Md.

Asbury Park, N. J.
Atlantic City, N. J.
Berlin, N. J.
Bordentown, N. J.
Burlington, N. J.
Camden, N. J.

Birmingham, Pa.
Blairsville, Pa.
Butler, Pa.
Chester, Pa.
Coatesville, Pa.
Connellsville, Pa.
Conshohocken, Pa.
Corry, Pa.
East Liberty Stock Yards, Pa.
Ebensburg, Pa.
Elizabethtown, Pa.
Erie, Pa.
Franklin, Pa.
Gap, Pa.
Germantown, Pa.
Greensburg, Pa.
Hamburg, Pa.
Harrisburg, Pa.
Hollidaysburg, Pa.
Huntingdon, Pa.
Jeanette, Pa.
Johnstown, Pa.
Kane, Pa,
Kensington, Pa.

100

Cape May, N. J.
Cape May Court House, N. J.
Egg Harbor, N. J.
Elizabeth, N. J.
Flemington, N. J.
Jersey City, N. J.
Lambertville, N. J.
Newark, N. J.
New Brunswick, N. J.
Ocean City, N. J.
Old Bridge, N. J.
Palermo, N. J.
Point Pleasant, N. J.
Princeton, N. J.
Red Bank, N. J.
Sea Isle City, N. J.
Trenton, N. J.

Brooklyn, N. Y.
Canandaigua, N. Y.
Elmira, N. Y.
New York city, N. Y.
Penn Yan, N. Y.
Sodus, N. Y.
Watkins, N. Y.

Abattoir Drove Yards, Pa.
Allegheny, Pa.
Altoona, Pa.
Lancaster, Pa.
Latrobe, Pa.
Loyalhanna, Pa.
Mt. Pleasant, Westmoreland Co., Pa.
McKeesport, Pa.
Norristown, Pa.
Oil City, Pa.
Pencoyd, Pa.
Philadelphia, Pa.
Pittsburg, Pa.
Pottstown, Pa.
Pottsville, Pa.
Reading, Pa.
Scottdale, Pa.
South Side, Pa.
Steelton, Pa.
Thurlow, Pa.
Tyrone, Pa.
Union City, Pa.
Uniontown, Pa.
Vintondale, Pa.
Warren, Pa
West Chester, Pa.
West Phila., Pa.
West Phila. Stock Yards, Pa.
Wilkesbarre, Pa.
Wilkinsburg, Pa.
Wilmerding, Pa.

SCHEDULE C.

	Penna. Railroad prop'n.	Postal Telegraph-Cable Co. prop'n.	Connecting lines prop'n.
Canadian Pacific Ry. Co.'s Telegraph, east	25	25	50
Canadian Pacific Ry. Co.'s Telegraph, west	12½	12½	75
Rocky Mountain Telegraph Company	33⅓	33⅓	33⅓
North American Telegraph Company	25	25	50
New York, Philada. & Norfolk Telegraph Company	28⅔	28⅔	42½
El Paso & North Eastern Ry. Co	32½	32½	35
Ann Arbor Railroad Co	30	30	40
Postal Telegraph-Cable Co. of Texas	30	30	40
Sante Fe & Grand Canyon Ry. Co	37½	37½	25
Sante Fe, Prescott & Phœnix Ry. Co	16⅔	nil	83⅓

101 In the United States Circuit Court for the District of New Jersey.

Between—

THE WESTERN UNION TELEGRAPH COMPANY, Complainant,
and
THE PENNSYLVANIA RAILROAD COMPANY and THE United New Jersey Railroad and Canal Company, Defendants.
} On Bill, etc.

Affidavit of William Ettinger.

(Filed December 18, 1902.)

STATE OF NEW JERSEY, *County of Hudson*, } *ss.:*

William Ettinger, being by me duly sworn, on his oath deposes and says:

That he is division operator of the New York division of the Pennsylvania Railroad Company. That his office is in Jersey City, and that the division extends from the water front in Jersey City, New Jersey, to the city of Philadelphia, in the State of Pennsylvania, and includes the main line of the Pennsylvania railroad from Jersey City to the Delaware river at Trenton. As division operator he has charge of all the telegraph and telephone lines on all the property of The United New Jersey Railroad and Canal Company and The Pennsylvania Railroad Company, the defendants in the above entitled suit, in the State of New Jersey. He has filled such position continuously for twenty-nine years last past.

The following is a general description of the present location of the poles of the Western Union Telegraph Company between Jersey City and the Delaware river, at Trenton, along the main line of the defendants:

Commencing at the Hudson river, the first wires of the line of the Western Union Telegraph Company which are on the property of the United New Jersey Railroad and Canal Company, leased to the Pennsylvania Railroad Company, and which wires form part of the telegraph line from New York to Trenton, consist of a cable attached to the east end of the pier of the defendants, known as pier C,
102 in Jersey City. The said cable runs on or through the property of the defendants westwardly along said pier to the line of solid filling, and thence underground, stil- on the property of defendants, to a point in Exchange place, Jersey City, opposite number 26 Exchange place, and on the north side thereof, a distance of about nine hundred feet from the river end of said pier C. That no portion of said cable is on the right of way of the United New Jersey Railroad and Canal Company or the Pennsylvania Railroad Company.

From said pole said telegraph line runs westwardly on poles erected on property of the defendants, but not on their right of way, to Washington street, a distance of about twelve hundred feet.

From Washington to Warren street, poles and wires of this line are on defendants' property, outside of the right of way.

From Warren street to a point about six hundred feet west thereof, five poles of this line are on the property of the defendant, but outside of their right of way.

From that point to Brunswick street, the wires and poles of this line are outside of the railroad property.

From Brunswick street to a point about sixteen hundred feet west thereof, there are twelve telegraph poles and wires of this line within the right of way of the railroad company.

From a point sixteen hundred feet west of Brunswick street to a point twenty-eight hundred feet west thereof, the telegraph poles and wires are on the defendants' property, but outside of their right of way.

From a point twenty-eight hundred feet west of Brunswick street to a point thirty-seven hundred feet west thereof, the telegraph poles and wires are within the right of way of the railroad company.

From a point thirty-seven hundred feet west of Brunswick street to a point near West Side avenue, Marion, the telegraph poles and wires are on the defendants' property, but outside of their right of way.

From West Side avenue to Giles street, there are eight of the poles of this line outside of the railroad property.

From Giles street to the east side of the Hackensack river, the poles and wires are on defendants' property, but outside of their right of way.

The wires are carried across the Hackensack river on bridge structure of the defendants.

From the westerly bank of the Hackensack river to Sixth street, Harrison, the poles and wires are on defendants' property, outside of their right of way.

103 From Sixth street to Fifth street, Harrison, the poles and wires are on the right of way of the railroad company.

From Fifth street to Fourth street, Harrison, the poles and wires are outside of the right of way, off of the railroad property.

From Fourth street, Harrison, to the Passaic river, the poles and wires are on defendants' right of way.

On Centre Street branch, from Fourth street to the Passaic river, the poles are on defendants' right of way.

The wires of this line are carried across the Passaic river on both the Commercial Dock route and the Centre Street route, by means of cables.

From the westerly side of Passaic river (with the exception of one pole located at the junction of River street and Railroad avenue) to a point near West Newark Junction, the poles are off the right of way and the railroad property.

The said one pole is on the right of way of defendants.

From a point near West Newark Junction to a point about a mile west of Waverly, the poles are outside of defendants' right of way and on defendants' property.

From a point about a mile west of Waverly to the Central railroad, Elizabeth, the poles are within the right of way.

From the Central Railroad crossing at Elizabeth to a point near Rahway avenue, Elizabeth, the poles are on defendants' property, but outside of their right of way.

From Rahway avenue, Elizabeth, to South Elizabeth Station, the poles are outside of railroad property.

From South Elizabeth Station to Main street, Rahway, the poles are on defendants' property, but not on their right of way.

From Main street, Rahway, to Poplar street, the poles are on the right of way.

From Poplar street, Rahway, to Milton avenue, the poles are on defendants' property, but not on their right of way.

From Milton avenue to a point four hundred feet west of Hazelwood avenue, the poles of this line are within the right of way of the railroad company.

From a point four hundred feet west of Hazelwood avenue to Six roads, a distance of about one half a mile, the poles of this line are outside of the right of way of defendants.

From Six roads to the crossing of the Essex and Middlesex turnpike, a distance of about a mile and a half, the poles of this line are on the property of the defendants, but outside of their right of way.

104 From this point to Iselin Station, a distance of about three-quarters of a mile, the poles of this line are on the right of way of the railroad company.

From Iselin to a point about forty-six hundred feet west thereof, the poles of this line are on the property of the defendants, but not on their right of way.

From a point about forty-six hundred feet west of Iselin, to a point about fifty-nine hundred feet west of Iselin, the poles of this line are within the right of way of the railroad company.

From a point fifty-nine hundred feet west of Iselin to the Raritan river, the poles of this line are on the property of the defendants, but not on their right of way.

From the east side of the Raritan river to the west side thereof, the telegraph wires are carried by means of a cable attached to the bridge of the railroad company.

From the west side of the Raritan river to George street in the city of New Brunswick, the poles of this line are outside of the right of way of the railroad company.

From George street, New Brunswick, to Handy street, New Brunswick, the poles of this line are on the right of way of the railroad company.

From Handy street, New Brunswick, to Millstone Junction, a distance of about one mile, the poles of this line are on the property of the defendants, but not on their right of way.

From Millstone Junction to the Delaware river (with the exception of nine poles near Union street in the city of Trenton), the poles of this line are on the right of way of the railroad company.

This line is the line of telegraph referred to in the bill of complaint, as a line of telegraph owned, maintained and operated by the Western Union Telegraph Company over and along the right of way of the above-named defendants.

WM. ETTINGER.

Subscribed and sworn to this 16th day of December, 1902, at Jersey City, N. J., before me,

WILLIAM A. MARTIN,
[L. S.] *Notary Public of New Jersey.*

105 In the United States Circuit Court for the District of New Jersey.

Between—

THE WESTERN UNION TELEGRAPH COMPANY and THE PENNNSYLVANIA RAILROAD COMPANY and THE United New Jersey Railroad and Canal Company. } On Bill, etc.

Affidavit af Charles M. Sheaffer.

(Filed December 18, 1902.)

Charles M. Sheaffer, being duly sworn says:

1. I am the superintendent of telegraph of the Pennsylvania Railroad Company.

I have occupied that position, and other positions which have obliged me to familiarize myself with the method of construction and operation of telegraph wires and poles, for upwards of twenty years. I am thoroughly familiar with such methods of construction and operation.

2. The usual method of constructing telegraph wires and poles, is to fasten to the pole, at or near the top, a cross arm or bar, upon which the wires are strung. The usual length of the cross arm or bar is seven feet ten inches. Some of these cross bars, however, are ten feet six inches in length. The cross bar or arm is usually made to extend nearly equally on each side of the pole, each arm projecting about four feet beyond it. In some methods of construction, however, the whole cross arm or bar projects from one side of the pole, entailing more danger of falling of the wires thus strung across the arm or bar.

If a line of poles and wires on the side of a railroad right of way, should be constructed in the ordinary manner, with the ordinary length of cross arm, part on each side of the pole, it would be neces-

sary to plant the pole four feet inside of the right of way, physically occupying the point in which the pole is planted, and overhanging nearly eight feet in width of such right of way with the over-laid wires.

3. There is more or less danger attendant upon the stringing of a lot of telegraph wires over the right of way of a railroad company. In case of storms of sleet or snow there is danger of the wires
106 breaking or becoming slack, thereby endangering the operation of the railroad.

4. Where a line of telegraph poles and wires is located along a railroad right of way at curves, it is necessary to guy or to brace the pole by guys of wire, or like substance, or by poles. The point of fastening of the guy rope or wire, or of planting the base of a bracing pole of the height of those now upon the Pennsylvania railroad, should not be less than four feet from the pole braced, and ought, for absolute safety, to be ten feet therefrom.

This guying or bracing necessarily entails a considerable use of the railroad right of way beyond the pole.

5. The railroad company has a line of wires and poles which it uses exclusively for its railroad purposes in the operation of its road. It is necessary for its railroad purposes that this shall be maintained.

Much additional business of telegraphing requires to be done by it in and about the carrying on of its business, which cannot be done upon the line of wires and poles thus used by it exclusively. It has found it necessary for many years and still finds it necessary, to secure the maintenance and use of a second line of wires and poles.

6. There is no place upon the right of way of the railroad company upon which such second line of wires and poles can be located, other than that occupied by the Western Union Telegraph Company prior to the notice given to it to remove its poles and wires from the right of way of the railroad company.

7. For the safety of the railroad company's operations, the control of all telegraph appliances upon its right of way should be reserved to it. An appropriation of a portion of its right of way for use by a telegraph company exclusively for its purposes would subject the business of transportation along the railroad to great risks because of the lack of necessary control over the same by the railroad company.

8. Familiar with the lines of the railroad company and of its system, I say that its whole right of way is necessary for its railroad purposes and the business necessary and properly incidental thereto; and that no additional line of poles and wires beyond the two to which I have referred, can be erected upon its right of way without interfering with the ordinary travel along said railroad, and with its necessary and proper operation.

9. The Western Union Telegraph Company has removed its telegraphic appliances from the depots and stations along the line
107 of the railroad company, and now does its business in many of the cities and towns in which said depots and stations are

located through connections between its lines along the railroad system right of way and the lines leading into various independent offices in said cities and towns.

10. There is not any great difficulty in obtaining, at a reasonable cost, a right of way between all the cities, towns and places of business located along the line of said railroad and of its system. Almost all, if not all, the cities, towns and places of business are connected by roads, streets and highways upon which its telegraph lines can be constructed.

11. I believe and therefore aver that the Western Union Telegraph Company will be enabled without serious delay or difficulty to transact all its business by means of facilities now within its control, outside of the lines of wires and poles on the right of way of the railroad company.

12. The railroad company at very many place- now occupies the whole of the right of way with its railroad tracks and the necessary intervening spaces. The number of such places thus occupied is constantly increasing. During the past twenty years it has frequently found it necessary to increase the width of its original right of way, in order to transact its business. It will, in my judgment, be frequently necessary in the future, for the transaction of such business, to make additional acquirements of land, in further widening of its right of way.

CHARLES M. SHEAFFER.

Sworn to and subscribed before me, a notary public of the Commonwealth of Pennsylvania, this seventeenth day of December, A. D. 1902.

HIRAM H. POTTS, [L. S.]
Notary Public.

Commission expires February 26th, 1905.

108 United States Circuit Court, District of New Jersey.

Between—

WESTERN UNION TELEGRAPH CO., Complainant,
and
PENNSYLVANIA RAILROAD CO. ET ALS., Defendants. } On Bill, etc.

Opinion.

(Filed January 14, 1903.)

Two suits have been brought in this court, the one at law to condemn lands of the defendant company sufficient for the construction, maintenance and operation of the telegraph lines of the complainant, The Western Union Telegraph Company, under and in accordance with the provisions of a certain act of the Congress of

the United States passed July 24, 1866; and the other in equity to restrain the defendant from interfering with the telegraph lines of complainant now erected upon and along defendant's right of way until the question of the complainant's right to condemn the said lands upon the payment of compensation has been determined by the court.

It appears by the record that the complainant company has maintained its telegraph poles and lines upon the right of way used by the defendant for more than forty years and that on September 20, 1881, an agreement was entered into between the complainant and defendant companies to continue for twenty years from that date, in and by which, for the rent therein reserved, the said defendant company granted to said complainant company a right to place, maintain and use upon the right of way of the Pennsylvania Railroad Company and the roads owned, operated or leased by it, a single line of telegraph poles and to maintain thereon such wires as the telegraph company might from time to time elect.

The said agreement also contained this provision:—"If no new agreement be made by the parties hereto, the telegraph company shall at the termination of this contract, or at any time thereafter, upon receiving written notice from the railroad company, remove within six months from the receipt of said notice all of its
109 poles and wires and leave the property of the railroad company in good condition and free from the encumbrance thereof to the satisfaction of the general manager or other proper officer of the railroad company, and if not so removed the railroad company may remove them at the expense of the telegraph company."

In accordance with this provision and after it had been determined that they would not renew the contract, the railroad company, on the 15th day of May, 1902, gave notice to the telegraph company that it must remove its poles and wires from their right of way on or before December 1, then next ensuing, and that if it failed so to do, the railroad company would cause them, under the clause of the contract above referred to, to be removed. The bill recites, and the allegation is substantiated by affidavit, that the wires which are strung over and upon the defendants' right of way are a part of a main trunk line, used by them in the interchange of communication for public and commercial purposes between people dwelling in different States of the Union; that their destruction would seriously interfere with such communication; that the lines have been erected at great cost, and that their worth in their present condition is in the neighborhood of three hundred and fifty thousand dollars; and that if the wires should be removed from the poles on which they are strung, and the poles cut down, their value would be less than fifty thousand dollars. It is alleged that under this condition of affairs the pecuniary loss which would be inflicted upon the complainant by the destruction of its poles and wires and the inconvenience entailed upon the general public would be very great; not only the injury would be one which, should the right which the

complainants claim exist, they ought not to be required to suffer, but one for which there could be no adequate pecuniary recovery.

Upon this statement of facts the complainant asked that the defendant company be restrained from removing its poles and wires from its, the defendant company's right of way, in accordance with the strict terms of the contract, until their right of condemnation could be heard and determined; and the court granted a rule to show cause why such preliminary injunction should not issue according to the prayer of the said bill, which said rule now comes on to be heard.

Upon the case now presented it appears that on July 24, 1866, Congress enacted that:

"Any telegraph company now organized or which may hereafter be organized under the laws of any State, shall have the
110 right to construct, maintain and operate telegraph lines * * * over and along any of the military or post roads of the United States which have been or may hereafter be declared such by law * * * but such lines of telegraph shall be so constructed and maintained as not to * * * interfere with the ordinary travel on such military or post roads."

That act further provided that, before any telegraph company should exercise any of the powers or privileges conferred by the act, such company should file its written acceptance with the Postmaster-General of the restrictions and obligations required by the act.

This act, the bill alleges, was accepted by the complainant company on the eighth day of June, 1867, and since that time the complainant company has conducted its business in accordance with such restrictions and obligations.

All railroads of the United States are by law declared to be post roads, (Revised Statutes, sec. 3964) and the right of way of the defendant company thereby became subject to the provisions of the act of 1866.

While the question here at issue has not the judicial interpretation by the court of last resort, the statute of July 24, 1866, as applicable to post roads, has several times been before the courts for their construction. It has been held that because of this law one company having exclusive privileges under the State law cannot prohibit the erection of the telegraph lines of another company on the post roads of the United States where such other companies have accepted the provisions of the act of July 24, 1866, when those in control of such roads have given their assent. (Pensacola Telegraph Company *vs.* Western Union Telegraph Company, 96 U. S. 1.)

It has also been decided, in United States *vs.* Union Pacific Railroad Company (160 U. S., 1) "That no railroad company owning a post road of the United States over which interstate commerce is carried on, can, consistently with the act of July 24, 1866, bind itself by agreement to exclude from its roadway any telegraph company incorporated under the laws of a State, which accepts the provisions of the act and desires the use of that roadway for its line in such manner as will not interfere with the ordinary travel thereon."

The right of a telegraph company which has complied with the provisions of the law to enter a State and erect its poles and lines therein, in accordance with the act of 1866, is recognized in the case of The Western Union Telegraph Company *vs.* Massachusetts (125 U. S., 530).

111 If a State cannot, by legislative enactment, prohibit a foreign corporation which has complied with the act of 1866 from erecting its poles and wires over a post road belonging to a railroad company which has given its assent thereto; and if a railroad company cannot, by agreement with one telegraph company, bind itself to exclude another telegraph company from the use of its right of way because it is a post road, how can a railroad company (being a post road) nullify the law by arbitrarily refusing to grant them a right which the law confers? Surely if the railroad company cannot bind itself by agreemont to exclude the telegraph company, it cannot do so arbitrarily.

It would seem that inasmuch as the act of July 24, 1866, gave any telegraph company, operating under State laws and accepting the provisions of the act, the right to erect its poles upon the post roads of the United States, so, too, it prohibited the owners of such post roads from doing anything which might be hostile to the object contemplated by Congress, and render its act ineffectual.

Postal Telegraph Company *vs.* Oregon Short Line (114 Fed Rep., 787) was a suit to condemn a right of way for the plaintiff over the road of the Oregon Short Line. All of the questions raised here were there discussed by the learned judge, and the circuit court held that such right of condemnation existed, under the acts of Congress before referred to, and proceeded to assess the damages incurred thereby. Sufficient time has not elapsed since the rendering of this decision to have it passed upon by the court of last resort, and it is not, therefore, binding upon this court. It is not necessary however, that at this time this court should definitely pass upon that question of right. Enough has been said to show that the contention of the complainant of its right to condemn is not without force.

The only question now before the court, upon the return of this rule, is whether the defendants should be enjoined, pending the determination of the complainant's right to condemn, from interfering with the *status quo*, and doing to the complainant an injury which may be irreparable.

The rule relating to the granting of injunctions in such cases is well settled. The jurisdiction of a court of equity, among other things, is founded upon the right to prevent permanent injury for which pecuniary compensation is inadequate. It is not necessary that the court should determine that the complainant is entitled to a final award in its favor; it is enough that the case presented seems sufficiently meritorious to warrant the court in preserving the *status quo* until the real merits of the controversy have been finally determined.

112 In Allison *vs.* Corson (88 Fed. Rep., 581) it was said: "A preliminary injunction may properly issue whenever the

questions of law or fact, to be ultimately determined are grave and difficult and the injury to the moving party will be immediate and certain and great if denied, while the loss or inconvenience to the opposing party will be comparatively small and insignificant if it is granted."

It seems to me that the situation in the case at bar is analogous to that in the City of Newton *vs.* Lewis (79 Fed. Rep., 715) and that the remarks of Sanborn, circuit judge, apply here with peculiar force: "But the court knew that it must ultimately consider and determine these matters at the final hearing of the case, and if meanwhile it refused to issue the injunction, the property and business of the electric company would be immediately destroyed and the final decree of the court, if it should be in its favor, would be utterly nugatory."

To grant the injunction asked for in this case would result in irreparable injury to no one, while the refusal so to do, from which there would be no appeal, would result in the destruction of complainant's property for which they could receive no compensation.

It has been urged on the part of the defendants that the complainant should be required to vacate the premises of the defendant companies, in accordance with the terms of its contract. This, however, would but entail a great destruction in value of property without compensatory benefit to any one. If the right of condemnation exists, complainants should not be subjected to that loss while exercising it. The defendants also say that they have entered into a new contract, with another telegraph company, and that there is not sufficient room on their right of way to permit the maintenance and operation of the lines of more than one telegraph company. This question ought, I think, for the reasons above given, to await the final determination of the cause.

In view of the facts presented, and for the reasons above stated, I have decided to make permanent this injunction. In this way the defendants will have an opportunity to appeal to the next term of the circuit court of appeals; while, should the rule *he* discharged, the complainant would have no appeal and the injury to its property, which is threatened, would have been accomplished before the case had been properly considered.

Let the rule heretofore granted be made absolute.

ANDREW KIRKPATRICK, *Judge.*

113 In the United States Circuit Court for the District of New Jersey, as yet of the Term of September, 1902.

THE WESTERN UNION TELEGRAPH COMPANY, Complainant,
vs.
THE PENNSYLVANIA RAILROAD COMPANY and THE United New Jersey Railroad and Canal Company, Defendants.
} On Bill for Injunction.

Order for Preliminary Injunction.

(Filed January 21, 1903.)

The order to show cause heretofore granted in the above stated cause coming on to be heard before the court in presence of John F. Dillon, Rush Taggart, Henry D. Estabrook and Richard V. Lindabury, of counsel with the complainant, and John G. Johnson and James G. Vredenburgh, of counsel with the defendants, and the complainants' bill of complaint and the affidavit annexed thereto and the affidavits filed by the defendants, having been read, and counsel for the respective parties having been heard, and the court having taken time for consideration,

It is now, on this twenty-first day of January, in the year of our Lord, one thousand nine hundred and three, ordered by the court in virtue of the power and authority vested therein by the Constitution and laws of the United States and according to the rules and practice thereof, that a preliminary injunction do issue according to the prayer of the said bill of complaint, to be directed to the said defendants The Pennsylvania Railroad Company and The United New Jersey Railroad and Canal Company, their and each of their servants, agents and employés, restraining the said defendants hereinabove named, and each of them, their and each of their servants, agents and employés, from in any manner interfering with the use and operation of the telegraph lines of the said complainant upon the roadway and right of way of the said defendants in the State of New Jersey, as described in the said bill of complaint, or of any of them, or of any part thereof, pending the determination of the said action at law referred to in the said bill of complaint, or until the further order of this court in the premises.

ANDREW KIRKPATRICK, *Judge.*

114 In the United States Circuit Court for the District of New Jersey.

THE WESTERN UNION TELEGRAPH COMPANY, Complainant,
vs.
THE PENNSYLVANIA RAILROAD COMPANY and THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, Respondents.

Assignment of Errors.

(Filed January 27, 1903.)

The respondents file the following assignments of errors upon which they and each of them will rely upon their appeal from the interlocutory order made by this honorable court on the twenty-first day of January nineteen hundred and three, granting an injunction *pendente lite* in said cause.

The respondents assign in error upon this appeal the following, namely:

The circuit court erred in making said interlocutory order:

First. In deciding that the said court had jurisdiction.

Second. In deciding that a preliminary injunction should issue in accordance with the prayer of the bill of complaint, to be directed to the said defendant The Pennsylvania Railroad Company, restraining the said The Pennsylvania Railroad Company, its servants, agents and employees, from in any manner interfering with the use and operation of the telegraph lines of the said complainant upon the roadway and right of way of the said defendant in the State of New Jersey as described in the bill of complaint, or of any — them, or of any part thereof.

Third. In deciding that a preliminary injunction should issue in accordance with the prayer of the bill of complaint, to be directed to the said defendant The United New Jersey Railroad and Canal Company, restraining the said The United New Jersey Railroad and Canal Company, its servants, agents and employees, from in any manner interfering with the use and operation of the telegraph lines of the said complainant in the State of New Jersey as described in the bill of complaint, or of any of them, or of any part thereof.

Fourth. The court erred in ordering a preliminary injunction to issue according to the prayer of the said bill of complaint, to
115 be directed to the said defendants, their and each of their servants, agents and employees, restraining the said defendants and each of them, their and each of their servants, agents and employees, from in any manner interfering with the use and operation of the telegraph lines of the said complainant upon the roadway and right of way of the said defendants in the State of New Jersey, as described in the said bill of complaint, or of any of them or of any part thereof, pending the determination of said action at

law referred to in the said bill of complaint, or until the further order of said court in the premises.

In order that the foregoing assignment of error may be and appear of record, the respondents present the same to the court and pray that such disposition may be made thereof as is in accordance with the law and the statute of the United States in such case made and provided.

All which is respectfully submitted.

JAMES B. VREDENBURGH,
Solicitor for the Pennsylvania Railroad Company.
J. D. BEDLE,
Solicitor for the United New Jersey Railroad and Canal Company.

In the United States Circuit Court for the District of New Jersey.

THE WESTERN UNION TELEGRAPH COMPANY, Complainant,
vs.
THE PENNSYLVANIA RAILROAD COMPANY and THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, Respondents.

Bond.

(Filed January 27, 1903.)

Know all men by these presents, that we, The Pennsylvania Railroad Company, a corporation, and The United New Jersey Railroad and Canal Company, a corporation, as principals, and American Surety Company of New York, as surety, are jointly and severally held and firmly bound unto the above-named The Western
116 Union Telegraph Company, in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said The Western Union Telegraph Company and its successors, for which payment well and truly to be made we bind ourselves, our and each of our heirs, executors, administrators, successors and assigns, severally firmly by these presents.

Sealed with our seals. Dated the twenty-sixth day of January in the year of our Lord one thousand nine hundred and three.

The condition of the above obligation is such that WHEREAS, the Pennsylvania Railroad Company and The United New Jersey Railroad Company and Canal Company have taken an appeal to the circuit court of appeals for the third circuit, to reverse an interlocutory order rendered and entered by the circuit court of the United States in and for the district of New Jersey, which order was made and entered in the above-entitled suit on the twenty-first day of January nineteen hundred and three;

Now, therefore, the condition of the above obligation is such that if the above-named The Pennsylvania Railroad Company and The

United New Jersey Railroad and Canal Company, respondents herein, shall prosecute said appeal to effect and answer all damages and costs, if they shall fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and effect.

THE PENNSYLVANIA RAILROAD COMPANY,
By JNO. P. GREEN, *Vice-President.*
LEWIS NEILSON, *Secretary.* [L. S.]
THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY,
By F. WOLCOTT JACKSON, *President.*

Attest:
LEROY H. ANDERSON, *Secretary.* [L. S.]

AMERICAN SURETY CO. OF NEW YORK,
By R. R. BENEDICT,
Resident Vice-President.

Attest:
M. E. NEVILLE, *Resident Ass't Secretary.* [L. S.]

117 The within bond is hereby approved this 27th day of January, 1903.

ANDREW KIRKPATRICK, *Judge.*

In the United States Circuit Court for the District of New Jersey.

THE WESTERN UNION TELEGRAPH COMPANY, Complainant,
vs.
THE PENNSYLVANIA RAILROAD COMPANY and THE United New Jersey Railroad and Canal Company, Respondents.
} Bill in Equity.

Petition of Appeal.

(Filed January 27, 1903.)

To the honorable the judges of the United States circuit court:

The above-named respondents in the above-entitled cause, The Pennsylvania Railroad Company and The United New Jersey Railroad and Canal Company, conceiving themselves aggrieved by the order made and entered by the above-named court in the above-entitled cause, under date of January twenty-first, nineteen hundred and three, wherein and whereby it was and is ordered that a preliminary injunction do issue according to the prayer of the said bill of complaint, to be directed to the said defendants, The Pennsylvania Railroad Company and The United New Jersey Railroad and Canal Company, their and each of their servants, agents and em-

ployees, restraining the said defendants and each of them, their and each of their servants, agents and employees, from in any manner interfering with the use and operation of the telegraph lines of the said complainant, upon the roadway and right of way of the said defendants in the State of New Jersey, as described in the said bill of complaint, or of any of them, or of any part thereof, pending the determination of the said action at law referred to in the said bill of complaint, or until the further action of the said court in the premises, and by which interlocutory order the complainant was awarded a preliminary injunction against the said respondents,—

hereby petition the said court for an order allowing said re-
118 spondents and each of them to prosecute an appeal from said interlocutory order granting said preliminary injunction, to the honorable United States circuit court of appeals for the third circuit, under and according to the laws of the United States in that behalf made and provided; and also that an order be made fixing the amount of security which the said respondents shall give and furnish upon such appeal; and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said appeal by said United States circuit court of appeals for the third circuit.

And your petitioners will ever pray, &c.

JAMES B. VREDENBURGH,
Solicitor for the Pennsylvania Railroad Company.

JAMES B. VREDENBURG, *Of Counsel.*

J. D. BEDLE,
Solicitor for the United New Jersey Railroad and Canal Company.

I allow this appeal.

ANDREW KIRKPATRICK, *Judge.*

Jan. 27, 1903.

Citation.

(Filed January 29, 1903.)

By the Hon. Andrew Kirkpatrick, judge of the district court of the United States for the district of New Jersey and *ex-officio* judge of the circuit court of the United States for said district, in the third circuit.

To the Western Union Telegraph Company:

Whereas, the Pennsylvania Railroad Company and the United New Jersey Railroad and Canal Company have lately appealed to the United States circuit court of appeals in the third circuit, from an interlocutory order and decree lately rendered in the circuit court

of the United States for the district of New Jersey, made in
119 favor of you, the said The Western Union Telegraph Company, and has filed the security required by law;

You are therefore hereby cited to appear before the said United States circuit court of appeals for the third circuit to be held at the city of Philadelphia in the State of Pennsylvania on the eighteenth day of February next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Trenton in the district of New Jersey in the third circuit, the twenty-seventh day of January in the year of our Lord one thousand nine hundred and three.

ANDREW KIRKPATRICK, *Judge.*

Service of a copy of the within citation is hereby acknowledged this 27th day of January, 1903.

RUSH TAGGERT,
Sol'r for Appellee,
Per R. V. LINDABURY.

120 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *District of New Jersey,* } *ss:*

I, S. D. Oliphant, clerk of the circuit court of the United States for the district of New Jersey, do hereby certify that the foregoing is a full, true and complete transcript of the record in the suit of The Western Union Telegraph Company against The Pennsylvania Railroad Company and The United New Jersey Railroad and Canal Company, as the same remains on file and of record in my office.

In testimony whereof, I have hereunto set my hand [L. S.] and affixed the seal of said court at Trenton, in said district, this sixteenth day of February, nineteen hundred and three.

S. D. OLIPHANT, *Clerk.*

121 And afterwards to wit: on the 20th day of March, A. D. 1903, this cause being called for argument on the transcript of record from the circuit court of the United States for the district of New Jersey, before Hon. M. W. Acheson, and Hon. George M. Dallas, circuit judges, and Hon. Edward G. Bradford, district judge, and being argued by counsel for the respective parties, and the court not being fully advised in the premises takes further time for consideration thereof.

And afterwards to wit: on the 19th. day of May, A. D. 1903, comes the parties aforesaid by their counsel aforesaid, and the court now being fully advised in the premises renders the following opinion, to wit:

In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1903.

THE WESTERN UNION TELEGRAPH COMPANY, a Corporation, a Citizen of the State of New York, Plaintiff in Error,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, a Corporation, a Citizen of the State of Pennsylvania, Defendant in Error. } No. 31.

March Term, 1903.

THE PENNSYLVANIA RAILROAD COMPANY and THE UNITED New Jersey Railroad and Canal Company, Appellants,
vs.
THE WESTERN UNION TELEGRAPH COMPANY, Appellee. } No. 14.

Before Acheson and Dallas, circuit judges, and Bradford, district judge.

DALLAS, *Circuit Judge:*

These two cases are parts of one and the same controversy.
122 They were argued together, and may be disposed of in a single opinion. One of them is before this court upon a writ of error to an order of the circuit court for the western district of Pennsylvania, made January 20, 1903, dismissing a petition by which the Western Union Telegraph Company sought to acquire by condemnation the use of the right of way of the Pennsylvania Railroad Company and its branches, for the telegraph company's lines of telegraph. The other is an appeal from a decree of the circuit court for the district of New Jersey, made upon January 21, 1903, awarding an injunction restraining the Pennsylvania Railroad Company and others from interfering with the telegraph lines of the Western Union Telegraph Company upon the right of way of the railroad company.

The situation of the parties, and their relation to each other, at the time these proceedings were instituted, may be briefly indicated. On June 20, 1864, the Pennsylvania Railroad Company contracted with the Atlantic & Ohio Telegraph Company for the use by the latter of the right of way of the railroad company for a telegraph line; and the line which was accordingly constructed, was thereafter operated by the Western Union Telegraph Company as lessee of the Atlantic & Ohio Telegraph Company. On September 20, 1881, however, the Western Union Telegraph Company itself entered into a contract with the Pennsylvania Railroad Company, and under this last mentioned contract, the lines of that telegraph company, over and along the right of way of the railroad company, have since been maintained and operated. This contract, which by its terms, was to continue in force for twenty years from its date, contained the following provisions:

"Sixteenth. If no new agreement be made by the parties hereto, the telegraph company shall at the termination of this contract, or at any time thereafter upon receiving written notice from the railroad company, remove within six months from the receipt of
123 said notice, all of its poles and wires and leave the property of the railroad company in good condition and free -rom the encumbrance thereof to the satisfaction of the general manager, or other proper officer of the railroad company, and if not so removed the railroad company may remove them at the expense of the telegraph company: Provided, however, that the payment agreed to be made by the telegraph company to the railroad company in the sixth clause hereof, and by the railroad company in the eighth clause, shall not apply to the said six months, the companies respectfully hereby expressly agreeing to waive the same.

* * * * * * *

Any easement or right of way heretofore acquired by the telegraph company upon any of the roads embraced in this agreement, either directly by contract or by assignment of contracts or agreements made by other companies with the railroad company, or with any of the companies whose roads or property are embraced in the schedule hereto attached, is hereby relinquished and abandoned, and the right and easements of the telegraph company upon the right of way of said railroad company shall be such only as are granted by this agreement, and shall cease with its termination."

On May 15, 1902, the railroad company gave a written notice to the telegraph company, as follows:

"PENNSYLVANIA RAILROAD COMPANY,
PHILADELPHIA, 15*th May*, 1902.

Mr. Robert C. Clowry, pres't Western Union Tel. Co., New York city.

MY DEAR SIR: In pursuance of action taken by the board of directors of this company on 14th, May, 1902, I send the enclosed notice.

Kindly acknowledge receipt, and oblige, very truly yours,
124 (Signed) LEWIS NEILSON, *Secretary.*

To the Western Union Telegraph Company:

You are hereby notified to remove within six (6) months from the first day of June, 1902, all of your poles, wires and property from the right-of-way and property of this company and of other companies named in a certain agreement between this company and you dated the twentieth day of September, anno Domini 1881, (a copy whereof is hereto attached), or named in any addition or additions, supplement or supplements, written or verbal, to said contract, and to leave the property of this company and of the other companies referred to in good condition and free from the encumbrances of your said poles, wires, and other property, to the satisfaction of the general manager of this company. And you are also notified that if not so removed and such property left in said good

condition by you, this company will, at your expense, cause your said poles, wires and other property occupying the right-of-way or property of this and the other companies referred to, to be removed and said property left in good condition free from the encumbrance of the said wires, poles, and other property, to the satisfaction of the general manager of this company.

In witness whereof, the said The Pennsylvania Railroad Company has caused its corporate seal to be hereunto affixed, duly attested by the signature of its proper officers, this fourteenth day of May, anno Domini, 1902.

THE PENNSYLVANIA RAILROAD COMPANY,

(Signed) By A. J. CASSATT, *President.*

Attest:

(Signed) [SEAL.] LEWIS NEILSON, *Secretary.*"

125 On June 20, 1902, the telegraph company sent to the railroad company $6250, "payment due June 20, 1902, as per contract," and this sum the railroad company's comptroller accepted. It does not appear, however, that he either intended or was authorized to waive the notice of May 15, 1902, which, it will be observed, had been ordered by the board of directors of the railroad company, and was given under its corporate seal, attested by the signatures of its president and secretary. Moreover, this remittance did not relate to a time extending beyond that within which the notice had required that the removal should be effected, but covered a period during the running of the notice, when the telegraph company was, under the contract, entitled to continue in occupation without payment of rent. In short, a sum of money which was not demanded nor demandable, was voluntarily paid, not in extension of the term, but upon the erroneous assumption that it was due "as per contract;" and although a minor officer or agent of the railroad company inadvertently or mistakenly accepted this payment, the notice which had been previously given, was not, in our opinion, in any way affected thereby. On June 25, 1902, the Pennsylvania Railroad Company entered into a contract with the Postal Telegraph-Cable Company, granting to that company certain pole facilities upon the railroad company's right of way for fifteen years, and the continued presence of the Western Union Company's lines thereon conflicts with the provisions and purposes of that contract.

The decree of the district — of New Jersey was not made upon the merits, but upon the ground that it would result in irreparable injury to no one, and might soon be reviewed upon appeal, whereas an order refusing an injunction would have entailed much loss to the telegraph company, and could not have been appealed from.

126 But now, as to both cases, the substantial rights of the parties are for determination, and to their consideration we accordingly proceed.

The controlling question may be plainly stated. It is this: Has

the telegraph company a contractual right to maintain its telegraph lines upon and over the right of way of the railroad company, or can it, independently of contract, acquire such right by condemnation? The first part of this inquiry admits of but one answer. The contract of September 20, 1881, expressly canceled all contracts theretofore made, and declared that any easement or right of way theretofore acquired by the telegraph company was relinquished and abandoned, and that the rights and easements of the telegraph company upon the right of way of the railroad company, should be such only as were granted by that agreement, and should cease with its termination. Hence, as the agreement had terminated when, in precise accordance with its terms, the notice to remove within six months from the first day of June, 1902, was given, it is manifest that no right of occupancy founded thereon, could exist beyond December 1, 1902.

If the asserted right of condemnation exist, it must be because it is conferred either by State law of by act of Congress. As to the law of New Jersey there is no question, the learned counsel of the telegraph company conceding that, as to that State, the right claimed rests upon the act of Congress hereafter referred to, although "the method of making that right effective" is provided by the State statute. But as respects the State of Pennsylvania, it is contended that its law, not only only provides the mode of procedure, but also vests in the telegraph company the right to condemn which it asserted in the circuit court for the western district of that State. We cannot sustain this contention. It is based upon the supposition that the railroad company's right of way is subject to appropriation under the authority given to the Atlantic and Ohio Telegraph Company,
127 by its charter, "to erect and construct works, edifices, fixtures and structures along any of the roads, highways, streets and waters within this State." But though a railroad company is, no doubt, a "highway," it is quite clear, we think, that it is not a highway to which this grant of authority is applicable. Railroads are, it is true, subject to use for the public benefit, and, in that sense, they are public highways, but they are owned, not by the public, but by corporations, which, so far at least as ownership is concerned, are private corporations. Consequently, it could not have been intended that they should be to any extent taken without compensation, and yet no provision for compensation was made with respect to highways, although for any "land" that should be occupied, it was expressly provided that if the parties could not agree, proceedings might be taken to determine "the price or compensation to be paid * * * for such land taken or used, or the damages done thereto." The distinction thus made is obvious, and the reason for making it is apparent. Nothing was said as to compensation for roads, highways, streets or waters, because those in contemplation were only such as the State itself owned, and the use of which it might therefore grant without exacting any recompense, whereas in delegating the power of eminent domain—to appropriate "lands"—the requirement of compensation was necessarily imposed. But

even if the authority given to occupy highways was not manifestly limited—as we think it was—to the public highways of the Commonwealth, it is at least certain that no authority to enter upon the right of way of railroads was plainly and distinctly granted, and it is well settled that the right of eminent domain may be exercised by a corporation, in any case, only when granted in express terms or by necessary implication; and that property held and applied by one corporation for a public use, cannot be appropriated by another for its use, without authority clearly expressed, or which may
128 be implied from the fact (which in this case does not exist) that the use claimed is absolutely necessary to the accomplishment of the purpose for which the claimant corporation was created. Penna. R. R. Co.'s App. 93 Pa. St., 150; Pittsburgh Junction R. R. Co.'s App. 122 Pa. St., 511; Sharon Ry. Co.'s App. 122 Pa. St., 533; Groff's App. 128 Pa. St., 621; Perry Co. R. R. *v.* N. & S. V. R. R. Co., 150 Pa. St., 193; Phillips *v.* D. W. & P. R. R. Co. 78 Pa. St. 177; Glover *v.* Beston, 14 Gray, 282.

But it is further insisted that the telegraph company having accepted the act of Congress of July 24, 1866, entitled An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military and other purposes, "the actual appropriation of the railroads of the Pennsylvania Railroad Company to the use of the Western Union Telegraph Company" is thereby effected. That part of the statute which is relied upon in support of this proposition, is set out in the brief of the telegraph company, as follows:

"That any telegraph company, now organized or which may hereafter be organized under the laws of any State in this Union, shall have the right to construct, maintain and operate lines of telegraph * * * over and along any of the military or post roads of the United States, which have been or may hereafter be declared such by act of Congress * * * provided that such lines of telegraph shall be so constructed and maintained as not to * * * interfere with the ordinary travel on such military or post roads."

If the question of construction thus presented were an open one, we could not yield our assent to the contention of the learned counsel of the telegraph company with respect to it. But it is not an open one. In Pensacola Co. *v.* Western Union Tel. Co., 96 U. S., 1, Mr. Chief Justice Waite, referring to this act of Congress, said: "It
129 gives no foreign corporation the right to enter upon private property without the consent of the owner and erect the necessary structures for its business, but it does provide that, whenever the consent of the owner is obtained, no State legislation shall prevent the occupation of post roads for telegraph purposes by such corporation as are willing to avail themselves of the privileges. * * * No question arises as to the authority of Congress to provide for the appropriation of private property to the uses of the telegraph, for no such attempt has been made. The use of public property alone is granted. If private property is required it must, so far as the present legislation is concerned, be obtained by private

arrangement with its owner. No compulsory proceedings are authorized." The meaning of this language is too plain for question. If the interpretation which it attaches to the statute is to be accepted, that which the telegraph company asks this court to put upon it, is, of course, impossible. But we are asked to disregard the parts of the opinion above quoted, and other of its statements of like import, upon the ground that they "are mere dicta." This we decline to do. Careful reading of the whole report of the case, has satisfied us that, in deciding it, the Supreme Court thoroughly considered the statute and the scope of the authority conferred by it, and that in saying that "no compulsory proceedings are authorized" by it, the Chief Justice deliberately and advisedly spoke for the other members of the court as well as for himself. That it settled the law was distinctly declared in Western Union Tel. Co. *v.* Ann Arbor Rd. Co., 178 U. S., 243, where, in an opinion by the present Chief Justice, it was said:

"It was not argued by counsel for the telegraph company that the telegraph company had any right under the statute, and independently of the contract, to maintain and operate this telegraph line over the railroad company's property; and it has been
130 long settled that that statute did not confer on telegraph companies the right to enter on private property without the consent of the owner, and erect the necessary structures for their business; 'but it does provide, that, whenever the consent of the owner is obtained, no State legislation shall prevent the occupation of post roads for telegraph purposes by such corporations as are willing to avail themselves of its privileges.' Pensacola Telegraph Company *v.* Western Union Telegraph Company, 96 U. S., 1. In that case Mr. Chief Justice Waite further said: 'No question arises as to the authority of Congress to provide for the appropriation of private property to the uses of the telegraph, for no such attempt has been made. The use of public property alone is granted. If private property is required, it must, so far as the present legislation is concerned, be obtained by private arrangement with its owner. No compulsory proceedings are authorized.' * * * As we have said, it was not asserted in argument that the telegraph company had the right independently of the contract to maintain its line on the railroad company's property, and in view of the settled construction of the statute, we could not permit such a contention to be recognized as the basis of jurisdiction."

These deliverances are conclusive. They have been so regarded by the circuit court for the northern district of Ohio (Postal Tel. Co. *v.* Cleveland, etc. Co., 94 Fed., 234), and we find nothing in any decision of the Supreme Court which indicates a purpose to repudiate or depart from them. Even if we doubted their correctness, we would feel bound to accept them as authoritative.

Having reached the conclusion that the fundamental position of the telegraph company, in each of these cases, is untena-
131 ble, no other of the points presented in argument need be considered. From what has been said it results that the

order of the circuit court for the western district of Pennsylvania must be affirmed with costs, and the decree of the circuit court for the district of New Jersey must be reversed with costs; and it is so ordered.

Bradford, district judge, concurs in the result.

Filed May 19, 1903.

132 In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1903.

THE PENNSYLVANIA RAILROAD COMPANY and THE UNITED New Jersey Railroad & Canal Company, Appellants,
vs.
THE WESTERN UNION TELEGRAPH COMPANY, Appellee. } No. 14.

Per Curiam:

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged and decreed as follows, viz.:

That the order of the United States circuit court for the district of New Jersey of the 21st day of January, A. D., 1903, ordering a preliminary injunction to issue to be directed to the defendants therein, The Pennsylvania Railroad Company and The United New Jersey Railroad & Canal Company, their and each of their servants, agents and employees, restraining them and each them, their and each of their servants, agents and employees, from in any manner interfering with the use and operation of the telegraph lines of The Western Union Telegraph Company, the complainant, upon the road-way and right of way of the said defendants in the State of New Jersey, as described in the bill of complaint therein, or of any of them or of any part thereof, pending the determination of the action at law referred to in the bill of complaint therein or until the further order of that court in the premises, be and the same is reversed with costs.

M. W. ACHESON,
Circuit Judge.

Philadelphia, June 11, 1903.

133 In the Supreme Court of the United States.

THE WESTERN UNION TELEGRAPH COMPANY, Appellant,
vs.
THE PENNSYLVANIA RAILROAD COMPANY and THE UNITED NEW Jersey Railroad & Canal Company, Appellees.

Petition for Appeal.

The above-named Western Union Telegraph Company of New York conceiving itself aggrieved by the final decree, order and

judgment entered in the above-entitled cause by the United States circuit court of appeals for the third circuit, the — day of June, 1903, hereby appeals from said final decree or order adjudging and decreeing that the order of injunction theretofore allowed by the United States circuit court for the district of New Jersey, restraining the said Pennsylvania Railroad and the United New Jersey Railroad & Canal Company, their and each of their servants, agents and employés from in any manner interfering with the use and operation of the telegraph lines of the Western Union Telegraph Company upon the roadway and right of way of the said Pennsylvania Railroad Company and the said The United New Jersey Railroad & Canal Company, as described in the bill of complaint therein, or any of them, or of any part thereof, pending the determination of the action at law referred to in the bill of complaint therein, or until the further order of that court in the premises, be reversed with costs, because, as averred in the opinion of said circuit court of appeals, the said bill of complaint of the Western Union Telegraph Company showed no equity, and that said Western Union Telegraph Company was not entitled to an injunction on the face of its said bill, under and by virtue of which judgment and decree the
134 said circuit court for the district of New Jersey would be in duty bound to dismiss said bill of complaint regardless of whatever plea, answer or demurrer the said Pennsylvania Railroad Company and the said The United New Jersey Railroad & Canal Company, or either of them, might make, file or interpose in said cause.

And the Western Union Telegraph Company prays that this, its appeal to the Supreme Court of the United States, may be allowed, and that a transcript of the record of proceedings and papers upon which said final decree, order and judgment was made, duly authenticated, may be sent to this court.

And now at the time of filing this petition for appeal, The Western Union Telegraph Company of New York, appellant, files an assignment of errors, setting up separately and particularly each error asserted and intended to be urged in this court.

And your petitioner will ever pray.

HENRY D. ESTRABROOK,
Solicitor for the Appellant, 195 *Broadway, N. Y.*

JOHN F. DILLON,
RUSH TAGGART,
R. V. LINDABURY,
Of Counsel.

Writ allowed June 17, 1903.

R. W. PECKHAM.

(Endorsed:) In the Supreme Court of the United States. The Western Union Telegraph Company, appellant, *vs.* The Pennsylvania Railroad Company and The United New Jersey Railroad & Canal Co. appellees. Petition for appeal. Filed June 18, 1903.

135 *Assignment of Errors.*

In the Supreme Court of the United States.

THE WESTERN UNION TELEGRAPH COMPANY, Appellant,
vs.
THE PENNSYLVANIA RAILROAD COMPANY and THE UNITED NEW JERSEY RAILROAD & CANAL COMPANY, Appellees.

Afterwards, to wit, on the 17th day of June, in the year of our Lord 1903, at the October term for 1903 of the Supreme Court of the United States at the Capitol in the city of Washington and District of Columbia, comes the said Western Union Telegraph Company by counsel and says: That in the record and proceedings in the above-entitled matter there is manifest error in this, to wit:

1. That the Western Union Telegraph Company, having accepted the provisions and restrictions of the act of Congress, July 24, 1866, was and is entitled to maintain its lines of telegraph over and along the right of way of the defendant railroad companies upon making just compensation and so long as the maintenance of its lines should not interfere with the ordinary travel on such post roads. And the United States circuit court of appeals for the third circuit erred in holding to the contrary.

2. That said circuit court of appeals erred in reversing the judgment and decree of the circuit court for the district of New Jersey, enjoining the defendant railroad companies, and either of them, from in any wise interfering with appellant's lines of telegraph, pending the determinatiou of the court, through commissioners or a jury, as to the compensation to be made defendant railroad companies or either of them for the continued maintenance of appellant's lines of telegraph on the right of way of said defendant railroad companies, subject to the limitations of the act of Congress aforesaid.

136 3. That the reversal of the said order of injunction, made as aforesaid by the circuit court of the United States for the district of New Jersey on the ground that the rights claimed by the appellant telegraph company were not granted to it under and by virtue of the act of Congress, July 24, 1866, was a final determination of the merits of this controversy; and the said circuit court of appeals erred in refusing to make its order and decree in form and words what it was in truth and effect.

4. That the said circuit court of appeals erred in not affirming the order and decree of the said circuit court for the district of New Jersey.

Wherefore, the said Western Union Telegraph Company prays

that the judgment of the said United States circuit court of appeals for the third circuit be reversed.

HENRY D. ESTRABROOK,
Solicitor for Appellant, 195 *Broadway, N. Y.*

JOHN F. DILLON,
RUSH TAGGART,
R. V. LINDABURY,
Of Counsel.

(Indorsed:) In the Supreme Court of the United States. The Western Union Telegraph Company, appellant, *vs.* The Pennsylvania Railroad Company and The United New Jersey Railroad & Canal Co., appellees. Assignment of errors, Filed June 18, 1903.

137 Know all men by these presents, that we, the Western Union Telegraph Company, as principal, and the American Surety Company of New York, as surety, are held and firmly bound unto the Pennsylvania Railroad Company and the United New Jersey Railroad and Canal Company in the full and just sum of one hundred thousand dollars, to be paid to the said The Pennsylvania Railroad Company and The United New Jersey Railroad and Canal Company certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 17th day of June, in the year of our Lord one thousand nine hundred and three.

Whereas, lately at a regular term of the United States circuit court of appeals for the third circuit in a suit depending in said court, between The Western Union Telegraph Company, complainant and appellee, and The Pennsylvania Railroad Company and The United New Jersey Railroad and Canal Company defendants and appellants a final order and decree was rendered against the said Western Union Telegraph Company, whereby an order and decree granting an injunction theretofore made by the United States circuit court for the district of New Jersey was reversed for want of equity in complainant's bill and the said The Western Union Telegraph Company, complainant and appellee in said court of appeals having obtained allowance of appeal and filed a copy thereof in the clerk's office of the said court to reverse the order & decree in the aforesaid suit, and a citation directed to the said The Penn-
138 sylvania Railroad Company and the United New Jersey and Canal Company defendants and appellants in said circuit court citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof.

Now the condition of the above obligation is such, that if the said The Western Union Telegraph Company shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its

plea good, then the above obligation to be void; else to remain in full force and virtue.

WESTERN UNION TELEGRAPH CO., [SEAL.]
By R. C. CLOWRY, *President.* [SEAL.]

Attest: A. R. BREWER, *Secretary.* [SEAL.]

AMERICAN SURETY COMPANY OF NEW YORK.
H. B. ZEVELY, *Vice-Pres.*
[SEAL.] CORTLANDT S. VAN RENSSELAER, *Attorney.*

Sealed and delivered in presence of—
C. A. VAN BRUNT.

139 STATE AND COUNTY OF NEW YORK, *ss:*

On this 17th day of June 1903, before me personally appeared H. B. Zevely, vice president of the American Surety Company of New York, to me known, who being by me duly sworn, did depose and say that he resided in the city of New York; that he is the vice president of the American Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said corporation do not exceed its assets as ascertained in the manner provided by law. And the said H. B. Zevely, further said that he was acquainted with Cortlandt S. Van Rensselaer subscribed to the said instrument, — is in the genuine handwriting of the said Cortlandt S. Van Rensselaer and was thereto subscribed by the like order of the said board of directors, and in the presence of him the said H. B. Zevely, vice president.

H. J. PEIRCEY,
[SEAL.] *Notary Public, Kings County, # 5.*

Certificate filed in New York county.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"Resolved, That the president and vice-president be and they hereby are, and each one of them is authorized and empowered to execute and deliver, and attach the seal of the company to any and all bonds and undertakings for, or on behalf of the company, in its business of guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and
140 undertakings required or permitted in all actions or proceedings by law allowed; such guarantee, bonds and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

COUNTY OF NEW YORK, ss:

I, Cortlandt S. Van Rensselaer attorney of the American Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the company at
[SEAL.] the city of New York, this 17th day of June, 1903.

CORTLANDT S. VAN RENSSELAER,
Attorney.

Approved June 17, 1903.

R. W. PECKHAM,
Asso. Jus. Sup. Ct. U. S.

141 In the Supreme Court of the United States.

THE WESTERN UNION TELEGRAPH Company, Appellant,
vs.
THE PENNSYLVANIA RAILROAD Company and The United New Jersey Railroad & Canal Company, Appellees.

On Appeal from the United States Circuit Court of Appeals for the Third Circuit.

Petition of Appellant for Order to Preserve the Status Quo Pending Hearing on Appeal by the Supreme Court of the United States.

Comes now the said appellant, The Western Union Telegraph Company, and represents and makes known to this honorable court:

1. That the Pennsylvania Railroad Company, a corporation organized under and by virtue of the laws of the State of Pennsylvania, owns and controls a system of railroad through leases, contracts, stock ownership, etc., and that a number of the roads included in said system and so owned, controlled and operated by said Pennsylvania Railroad Company are: The Pennsylvania Railroad Company, United New Jersey Railroad & Canal Company, the Philadelphia & Baltimore Central Railroad Company, and the Philadelphia, Baltimore & Washington Railroad Company.

2. That the Western Union Telegraph Company is a corporation organized under and by virtue of the laws of the State of New York; that it owns a system of telegraph lines ramifying throughout the United States; also a system of cables connecting the continent of North America with the continent of Europe and the continent of South America; that it has 23,000 offices or more in the United States, and transmits for the general public nearly seventy millions of messages each year, exclusive of messages transmitted for the Gov-

ernment of the United States, exclusive of railroad messages,
142 exclusive of its own official messages, and exclusive of messages transmitted over wires leased to private parties.

3. That for fifty years and more the Western Union Telegraph Company, and its predecessors in title and estate, have built, owned and operated thousand- of miles of telegraph lines along the right of way of the various railroad companies so, as aforesaid, owned, controlled and operated by the Pennsylvania Railroad Company, and that all of such lines are part of its general telegraph system and are absolutely necessary for the proper and effective operation of such system and the accommodation of its telegraphic business, both for the general public and the Government of the United States.

4. That for the fifty years last past it has occupied the right of way of said railroad companies under contractual relationship with said companies whereby it not only was entitled to the use of the right of way for the construction, maintenance and operation of its lines of telegraph, but under the terms of which it had established and continued to maintain telegraph offices in the various railroad stations along the lines of said roads.

5. That several contracts heretofore made with said Pennsylvania Railroad Company and its said constituent companies, having expired by lapse of time, and the said Pennsylvania Railroad Company refusing to renew said contracts or to meet representatives of the telegraph company for the purpose of negotiating the terms of new contracts, the said railroad company has not only given notice to the telegraph company to remove its lines from its various stations, which has been done, but has ordered the telegraph company to remove all its telegraph lines from the right of way of said railroad company and each of its constituent companies, threatening
143 that unless such lines are so removed it will, through its agents, cut down and remove said lines.

6. That the principal issue in this controversy is, whether, independent of contract, the telegraph company, having accepted the burdens, restrictions and obligations of the act of Congress, July 24, 1866, is entitled to maintain and operate its lines of telegraph along said railroads as post-roads of the United States on condition that it make just compensation to said railroad company for such use, and that its lines of telegraph shall be so maintained as not to interfere with the ordinary travel on such roads.

7. That for the purpose of enforcing its rights in this respect, the Western Union Telegraph Company brought its suit against the Pennsylvania Railroad Company and the United New Jersey Railroad & Canal Company in the United States circuit court for the district of New Jersey, on the law side of the court filing a petition asking that its said right be established, and that the court summon a jury or appoint appraisers to determine the amount of compensation which the telegraph company ought to pay to the railroad company for such use, offering at the same time to secure in any manner ordered by the court the payment of such compensation,

and on the equity side of said court asking that the Pennsylvania Railroad Company and the United New Jersey Railroad & Canal Company be restrained from destroying the property of the telegraph company, pending the determination of the litigation.

8. That it filed similar suites in the United States circuit court for the western district of Pennsylvania.

9. That, upon hearing and argument, his honor Judge Kirkpatrick, sitting as a circuit judge in said New Jersey phase of this controversy, granted a temporary injunction, from which appeal
144 was prosecuted by the railroad company to the circuit court of appeals; that upon hearing and argument, his honor Judge Buffington, sitting as a circuit judge in the western district of Pennsylvania, refused an injunction and dismissed the petition filed by the telegraph company on the law side of said court, from which order the telegraph company appealed to the circuit court of appeals for the third judicial circuit.

10. That said cases, coming on for hearing and argument before said circuit court of appeals as parts of one entire controversy, were by said court considered together, and said circuit court of appeals reversed the decision of Judge Kirkpatrick on the principal ground that the facts alleged in the bill of complaint of the telegraph company did not entitle it to the relief claimed, and that under the act of Congress, July 24, 1866, the telegraph company had no right to the use of a railroad right of way on any terms whatsoever except by and through the consent of the railroad company; and for like reasons the said court sustained the decision of his honor Judge Buffington, from which judgment of the circuit court of appeals for the third judicial circuit these proceedings on appeal and in error are prosecuted to this honorable court, where the matters and issues in controversy will be finally determined.

11. That immediately after the circuit court of appeals had given its opinion aforesaid and before this petitioner could apply to said court of appeals for an order to stay pending an appeal to the Supreme Court of the United States, the said defendant, The Pennsylvania Railroad Company, on the — day of May, 1903, with preconcerted and sudden force and violence, and with a multitude of persons armed with axes and other tools of *s*etruction, and thereunto commanded by the said Pennsylvania Railroad Company, took forcible and violent possession of the lines of telegraph then
145 in the peaceful and quiet possession of this petitioner, and cut down and destroyed the telegraph poles and detached therefrom the telegraph wires and instruments belonging to this petitioner, thereby destroying property that had cost petitioner in its creation more than one million dollars.

12. That thereupon your petitioner made application to said circuit court of appeals in this cause, proposing the form of final order to be entered by said court and praying an appeal to the Supreme Court of the United States from such order, and likewise praying that said court order the preservation and maintenance of the *status quo* of the property involved in this suit pending this appeal, or

until this court should order to the contrary, and offering a bond in whatever amount said court might order conditioned that this petitioner should prosecute its appeal with all diligence and answer in damages in case it should fail to make good its appeal, and filed in support of its application a brief, copy of which is hereto attached marked "Exhibit A."

That the Pennsylvania Railroad Company opposed this petitioner's said application and further proposed an order to be entered in said cause, and answered the brief of your petitioner, copy of which said brief is hereto attached marked "Exhibit B."

13. That said circuit court of appeals, without in any wise passing upon your petitioner's application for an order to preserve the *status quo*, entered its decree in the form and manner proposed by said Pennsylvania Railroad Company, being the decree from which this appeal is prosecuted

14. That afterwards—to wit, about noon of Saturday, June 13, 1903, the Pennsylvania Railroad Company, through its proper officers, proposed to the Western Union Telegraph Company to purchase its lines of telegraph, being the property here in-
146 volved, at a fair valuation and requiring an answer accepting its proposition by noon of the Monday following, to wit, June 15, 1903, threatening that unless your petitioner would so consent to sell its property it would remove the same from its right of way; that to this proposition your petitioner replied in the forenoon of the Monday aforesaid that under the circumstances it would sell its said property at an appraised value, conditioned that if it should make good its asserted rights under the act of Congress, July 24, 1866, such sale should be void; copies of the foregoing correspondence are hereto attached and marked "Exhibit C."

15. Your petitioner avers and makes known to this honorable court that it has little hope or expectation that its proposition to sell, conditioned as aforesaid, will be accepted by said railroad company, and your petitioner aver- that, unless so accepted or unless the said railroad company be restrained by the order of this court, it will cut down, remove and destroy all the telegraph lines of your petitioner now maintained and operated along and upon the United New Jersey Railroad & Canal Company in the State of New Jersey to its irreparable and irretrievable injury.

16. Your petitioner avers that it has diligently and with all expedition prosecuted its claim of right, as aforesaid, through the various courts to this court of last resort; that it honestly believes itself entitled to the rights claimed by it, and that it has not instituted these proceedings for the purposes of delay, and that it will continue to prosecute this, its said appeal, diligently and to effect; and that if, upon the consideration of this honorable court, the judgment of the circuit court of appeals, from which this appeal is prosecuted, shall be affirmed, it will, as best it may and in whatever time this honorable court may allow to it, remove its lines of tele-
147 graph from the right of way of said Pennsylvania Railroad Company and its constituent companies.

17. Your petitioner further avers that, while the lines of telegraph which, by order of this court, it is seeking to preserve pending this appeal, are of great value in actual cost of construction, and of even greater value considered as parts of its entire telegraphic system, said property, consisting almost wholly of lines and poles, if cut out of its system and no longer standing as working parts of said system, but considered solely as second-hand wire and cordwood, would be of relatively little value; and your petitioner avers and makes known unto this honorable court that, if the said Pennsylvania Railroad Company shall be permitted to carry out its threats and destroy and remove petitioner's lines of telegraph, great and irreparable injury will be caused to your petitioner, great inconvenience will be occasioned the general public and the Federal Government; no injury whatever will be done to or occasioned the said railroad company if the *status quo* is preserved and maintained pending this appeal.

Wherefore, your petitioner prays this honorable court that it will grant unto your petitioner, upon such terms as it may see fit to impose, an order that the *status quo* pending this appeal be respected and maintained by the parties hereto.

JOHN F. DILLON,
RUSH TAGGART,
HENRY D. ESTRABROOK,
For Petitioner.

R. V. LINDABURY, *Of Counsel.*

148 STATE OF NEW YORK, } ss.:
County of New York, }

Robert C. Clowry, being first duly sworn, deposes and says: That he is president of the foregoing petitioner, The Western Union Telegraph Company; that he has read this petition, is acquainted with its contents, and that the facts therein set forth are true.

ROBERT C. CLOWRY.

Subscribed in my presence and sworn to before me this 17th day of June 1903.

CHARLOTTE A. VAN BRUNT,
Notary Public, Kings County, No. 4.

Certificate filed in New York county.

149 United States Circuit Court of Appeals for the Third Circuit.

PENNSYLVANIA RAILROAD COMPANY and THE UNITED NEW Jersey Railroad and Canal Company, Appellants,
vs.
WESTERN UNION TELEGRAPH COMPANY, Appellees.

Appellants' Motion for an Order.

The order prayed for by appellants is printed at the end of this brief.

Brief of Appellants in Opposition of Application by Appellee to Settle Form of Order.

We submit a few observations under three heads:—

I. No final decree should be entered.

II. There is no right of appeal to the Supreme Court of the United States.

III. No order of supersedeas should be granted.

This case was argued in the court below, upon application by the complainant for a preliminary injunction. Affidavits were presented on behalf of the defendants, addressed to but few of the facts averred. It was not deemed necessary in resisting that ap-
150 plication, to challenge by contradictory averments such as could have been made, more than a few of the allegations of the bill. These, for the time, were allowed to pass without notice, the defendants intending, in their answer, to contradict them.

It would be manifestly unfair to permit the appellee to present its case to the Supreme Court of the United States upon final hearing upon a statement in its bill of facts which could, and which will, be contradicted. Such a course of procedure would entail upon a defendant in equity in resisting an interlocutory order, the duty of disclosing all the details of its defense.

The demand of the appellee is equally lacking in merit, whether considered from a legal point of view or from the standpoint of fact. There is no necessity for the use by the telegraph company of the appellants' right of way. All its business can be transacted by it on its lines otherwise located. Its sole desire, appellants believe, is to interfere with them in carrying out their plans for the use of their right of way, for their own telegraph purposes. They believe that their corporate purposes, as well as the public interests, will be furthered, by carrying out the contract with the Postal Telegraph Company.

The taking of the portion of their right of way proposed by the appellee, would most seriously incommode them, and would interfere with the ordinary travel upon their road.

It is the right of every defendant to determine whether he will demur, or make answer to a bill. It has always been the intention of these defendants, when it should become necessary for them to plead, to make full answer to all the averments made by the appellee, and to present to the court a defense upon the law as well as upon the facts.

The granting of the motion prayed for by the appellee would deprive them of their rights in this respect, and would give to the appellee an unfair advantage in the Supreme Court, which, hearing the cause upon appeal as from a final decree, made upon a partial presentation of the truth, would approach it from a point
151 different from that occupied by this court when it heard an appeal from a mere interlocutory order, made upon *ex parte* affidavits.

If the appellee succeeds in obtaining the entry of a final decree upon the pleadings as they now stand, and if it succeeds in convincing the Supreme Court of error in the decision by this court, the controversy will begin, not end, with the decree of that court. It will be necessary to remand the case to the circuit court, with instructions to permit the defendants to answer. The controversy will then start anew. The result will be that it will be necessary for the defendants to be embarrassed by two hearings in the Supreme Court of the United States, instead of by one.

The appellants protest against the delay which would result from their being subjected to the necessity of thus waiting for the determination of two appeals, before they can be relieved of the nuisance of appellee's poles and wires located in a space imperatively needed by them for other uses.

If this controversy must go to the Supreme Court of the United States, the appellants insist that it shall there be heard after they have been allowed all the rights accorded defendants in a court of chancery.

In the court below, had no special injunction been granted, the appellants would have had an absolute right to demur or to answer. Have they lost this right because of the improvident grant of a special injunction? Why should the telegraph company, after having availed itself of the long delay which this injunction afforded it, be allowed any further advantage by reason thereof?

In the cases cited by the appellee, viz: Stover Manufacturing Company *vs.* Mast, 177 U. S., 485, and in the still later case, Brill *vs.* Peckham, 23 Supreme Court Reporter, 562, it would seem that the defendants acquiesced in, perhaps requested, the entry of a final decree. In the absence of any objection by them, the complainant was not aggrieved by the entry of a decree which rested upon the fact that upon the best presentation of his case possible to
152 him, he had demonstrated its legal insufficiency. If this controversy is to be determined by the Supreme Court of the United States, the appellants wish it to be heard upon their whole defense: (1) A lack of any right to condemn conferred by the act of 1866; (2) a need by them of their whole right of way for their own

legitimate purposes; and (3) the preposterous character of the pretensions of the appellee.

At this time and to this court, the appellants make no request that the bill of the appellee shall be dismissed. If any purposes or desires of the appellee will be furthered by such dismissal, it can readily gratify them, after the record has been returned to the court below, by its own unaided action, in entering a discontinuance.

II. There is no right of appeal to the Supreme Court of the United States.

The effort of the appellee to procure the entry of a final decree upon an interlocutory motion, is a concession of the fact that no appeal lies to the Supreme Court of the United States from a refusal to grant a special injunction or from a reversal of an order which granted such injunction. The act of February, 1895, see c. 96, which authorized appeals from interlocutory orders or decrees, dissolving or refusing to dissolve an injunction, was superseded by a subsequent amendment. (See vol. I., Compiled Statutes of the United States, 1901, page 551.)

The decrees of the circuit court of appeals are final, "in all cases "in which the jurisdiction is dependent upon the opposite parties to "the suit or controversy being aliens and citizens of the United "States or citizens of different States."

No jurisdiction was vested in the circuit court of New Jersey, excepting by reason of the fact that the parties were citizens of different States. No Federal question was involved. This was determined in Ann Arbor Railroad Company *vs.* Western Union Telegraph Company, 178 U. S., 239. In that case the Supreme Court, upon its own motion, dismissed the proceedings for want of jurisdic-
153 tion, because a citizen of Ohio had removed to the United States circuit court of Ohio, a suit brought against it by a citizen of New York, after denying the claim that it had jurisdiction because a Federal question was involved, although, in the bill in that case filed, it was claimed that under the act of 1866 there was a right of eminent domain exercisable upon the railroad company's right of way. The Supreme Court, speaking through the Chief Justice, said:—

"As we have said, it was not asserted in argument that the tele-"graph company had the right, independently of the contract to "maintain its line on the railroad company's property, and in view "of the settled construction of the statute (the act of 1866) we could "not permit such a contention to be recognized as the basis of juris-"diction."

No appeal lies, therefore, (1) because the decree dissolving the special injunction is interlocutory, and (2) because what would otherwise be a Federal question as to the power conferred by the act of 1866 has been conclusively settled, and is not, therefore, open, even upon appeal from a final decree.

III. No order of supersedeas should be granted.

By its contract the appellee expressly agreed that at the expiration of six months' notice it would remove "all of its poles and wires

"and leave the property of the railroad company in good condition "and free from the incumbrance thereof to the satisfaction of the "general manager or other proper officer of the railroad company, "and if not so removed the railroad company may remove them "at the expense of the telegraph company."

The requisite notice was given. The six months expired 1st December, 1902. An injunction was granted by Judge Kirkpatrick, not because of his conviction of any right existing in the appellee, but because of his desire that the matter should be determined by this court, without intermediate disturbance of poles and wires. Although no injunction was granted by the circuit court of the western district of Pennsylvania, in view of the fact that the
154 question was pending in this court, the Pennsylvania Railroad Company, in the State of Pennsylvania, delayed its action.

This court determined, nearly six months after the expiration of the time during which it was the duty of the appellee to remove, that the latter had no right, under the act of 1866, to appropriate the railroad right of way.

The duty of the appellee under its contract to remove was plainly expressed. Even if entitled to exercise the right of eminent domain, it was not justified in refusing to perform its contract, but was compelled to proceed *de novo*. Only after judicial determination of the existence of its right, and after the entry of the proper security, could it erect its poles and string its wires.

The right alleged to exist under the act of 1866 was not one to retain, but, after appropriation of the right of way in accordance with law, *thereafter* to erect.

In the case of any other telegraph company asserting an alleged right of eminent domain, it would have been necessary to establish (1) that the act of 1866 permitted an appropriation and (2) that such appropriation would not "interfere with the ordinary travel" of the railroad. In the case of such other telegraph company, asserting such right, after an answer by the railroad company denying (1) the right to appropriate and (2) asserting that the appropriation would interfere with its use of its railroad, there could have been no entry until the question of law, and that of fact, had been finally determined.

The appellee sought to gain for itself an unconscionable advantage, by retaining a possession it had agreed to abandon, and thus, in anticipation of, and without performance of the pre-requisite conditions, to prevent the railroad company from operating its railroad. It sought to secure, before it had established its right, either in law, or in fact, what was not possible in the case of any other telegraph company. It tried to substitute for its duty to remove, an obligation on the part of the railroad company to permit an occupancy, in advance of any establishment of its right.

155 During nearly six months which have elapsed since the expiration of the period in which it was the duty of the appellee to remove, the appellants have been subjected to very great

inconvenience and pecuniary loss, and have been prevented from carrying out a contract made with the Postal Telegraph Company, necessary for the conduct of their business. Without payment of any consideration, the appellee has continued to use the railroad right of way.

There can be no doubt, judging by the published statement of the president of the corporation appellee, that it has prepared itself to conduct its whole business upon its other lines without loss to itself, or inconvenience to the public. It retains possession of the right of way of the appellants, more with a view to interfering with them in doing what they have determined upon, than for any other reason. The appellants are exposed to extreme inconvenience and loss by reason of the retention of the poles and wires. The pecuniary loss on this part of the railroad system is nearly $75,000 per annum.

Why should the appellee be permitted, in violation of its contract to remove, to gain an unconscionable advantage, not open to any other telegraph company claiming a right under the act of 1866, at the expense of the appellants, and to subject them to an inconvenience which cannot be overestimated?

The appellants cannot, without waiving their notice, accept any telegraphic service from the appellee. They are prevented from carrying out their contract with the Postal Telegraph Company. It is impossible for them to obtain the needed telegraphic service in the transaction of their business, inasmuch as a third line of wires and poles cannot be erected upon the right of way. The whole available space is occupied by the appellee.

The proposed order of *supersedeas* would grant to the appellee an injunction against the removal of the wires and poles until a final determination in the Supreme Court of the United States of a case in which that court has no appellate jurisdiction.

156 Even if such appellate jurisdiction exists, the *supersedeas* will operate as an injunction until the lapse of probably fifteen months before the appeal can be heard. Should the Supreme Court declare in favor of the right to appropriate under the act of 1866, the case must be remanded to the circuit court for further proceedings, which will involve a second appeal and several years' additional delay. The grant of a *supersedeas* will give from two to three years' gratuitous occupancy by the appellee of the right of way of the appellants. This court, which has held that no right exists in the appellee, will have rewarded it for its breach of its covenant to remove, by giving it for nothing a right of occupancy for which it paid a large annual amount during the continuance of the contract.

To grant the prayer of the petition will practically be to say, in every case in which the circuit court and the circuit court of appeals shall be of the opinion that no injunction shall be granted, that such injunction, indirectly, by the allowance of a *supersedeas*, shall be issued, until the Supreme Court of the United States can finally pass upon the rights of the parties. In the present case, this *supersedeas* will be granted, although the right asserted is one which has been

decided by the Supreme Court to be so non-existent, that it is not one open to discussion.

In conclusion, it may be not amiss to notice what is said to the effect that there has been "reckless and wanton destruction of the "property of the appellee."

The property referred to, alleged to have been recklessly and wantonly destroyed, was practically valueless as second-hand material, if removed. The destruction of value which must result from a removal must have been considered by the telegraph company when, in 1881, it agreed to remove after the expiration of six months' notice.

On the 5th July, 1902, a communication was sent to the telegraph company—

"To avoid unnecessary loss to your company incident to the re-
"moval of your poles and wires, we are willing to purchase at a fair
"valuation such of the lines as we can make use of, and, if
157 "you desire to take up this question Mr. Charles M. Schaffer,
"superintendent of telegraph, will hold himself in readiness
"to meet a representative of your company to agree upon the price
"of such lines."

No attention was paid to this offer.

The poles and wires were allowed to remain upon the railroad right of way in Pennsylvania notwithstanding the fact that no injunction had been granted, because of the willingness of the railroad company that this court should finally pass upon the question before it exercised its right to remove.

The notice to remove was given in May, 1902. It was followed up, within a month, by a notification to the telegraph company that a new contract had been made with the Postal Telegraph Company for the doing of the necessary telegraphic services of the appellants, which would render it necessary that the right of way should be cleared. Instead of applying immediately for an injunction, the appellee waited until the notice was just expiring, and thus by reason of its delay, greatly prolonged the legal determination of the right it set up.

Had the telegraph company, when this court settled the controversy, suggested any desire to remove its wires and poles, every courtesy would have been accorded to it. Instead of doing this, it promptly served notice that it would *continue* by dilatory proceedings, pending its illegal occupancy.

Nothing remained for the railroad company, after the case had been finally determined, unless prepared to wait indefinitely and to enjoin itself when the court said it should not be enjoined, but to assert its rights. Its operations were hampered and it was without necessary telegraph facilities.

The property was old and practically valueless. The telegraph company, as its president has admitted, had otherwise arranged to do its business. It was necessary for the railroad company to finish the removal as rapidly as possible. The method of removal was

one which fairly conserved the trifling value of the property as second-hand material, without unnecesseary expense.

158 The appellee claims to possess the right, *invitum*, to oc-upy forever, for its purposes, a considerable portion of the right of way acquired by the appellants, by an immense expenditure. The Supreme Court of the United States has twice decided that such right does not exist, stating, on the last occasion, that the question had been so settled that it would not permit it to be raised.

This court, without dissent, has also denied the existence of such right. The appellee under obligation to remove its poles and wires which, for six months, has illegally continued to obstruct the right of way of the appellants, and has interfered with its use for the public purposes for which it was intended, now demands a judicial prohibition, which will last for years, of performance of its covenants, concededly broken, until it can have determined its right to enter *invitum*. This demand is made, although, in the Ann Arbor case, it admitted, through its counsel, it had no such right.

If the Supreme Court of the United States can be induced to reverse its decisions, and to accord the right to enter to the appellee, it will thereafter be at liberty to do everything open to any other telegraph company. Upon filing its bond and perfecting its preliminary proceedings, it can then enter. All it will have lost will have been the advantage which would have accrued to it from a judicial sanction of its refusal to carry out its agreement to remove.

Whilst a special injunction sometimes interferes with the enforcement of rights which, upon final hearing, are proven to have existed, it is limited in its possibility of injury by the requirement of adequate security and by a determination by the chancellor granting the same that there is legal merit in the complainant's contention. The appellee, which has been found entitled to no injunction, now demands that upon entering its bond in the penal sum of $1000 it shall be awarded a *supersedeas*, which will give it all the advantages of an injunction without exposing it to any pecuniary loss, in a case in which it has not even a *prima facie* right.

159 If the motion prevails it will be found better in the future for a complainant to fail in its motion for an injunction, inasmuch as a *supersedeas* will accomplish all the purposes of such injunction without necessity of establishing a shadow of right and without subjecting it to any pecuniary responsibility.

We pray that the court will make the order attached hereto.

JAMES B. VREDENBERGH,
JOHN G. JOHNSON,
For Appellants.

160 United States Circuit Court of Appeals, Third Circuit. In Equity.

THE PENNSYLVANIA RAILROAD COMPANY and The United New Jersey Railroad and Canal Company, Appellants, *vs.* THE WESTERN UNION TELEGRAPH COMPANY, Appellee.	March Term, 1903. No. 14.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged and decreed, as follows, viz:—

That the order in the United States circuit court for the district of New Jersey, of the twenty-first day of January, A. D. 1903, ordering a preliminary injunction to issue to be directed to the defendants therein, The Pennsylvania Railroad Company and The United New Jersey Railroad and Canal Company, their and each of their servants, agents and employees, restraining them and each of them, their and each of their servants, agents and employees, from in any manner interfering with the use and operation of the telegraph lines of The Western Union Telegraph Company, the complainant, upon the roadway and right of way of the said defendants in the State of New Jersey, as described in the bill of complaint therein, or of any of them, or of any part thereof, pending the determination of the action at law referred to in the bill of complaint therein, or until the further order of that court in the premises, be reversed with costs.

161 United States Circuit Court of Appeals for the Third Circu —— Term, 1903.

THE PENNSYLVANIA RAILROAD COMPANY and The United New Jersey Railroad and Canal Company, Appellants, *vs.* THE WESTERN UNION TELEGRAPH COMPANY, Appellees.	Application by Appellee to Settle Form of Order and Brief in Support.

Brief.

On the right and duty of the court to enter the order and decree herewith submitted, and allow an appeal therefrom to the Supreme Court of the United States; and on the right and duty of the court, pending the appeal, to order the continuance and maintenance of the status quo. (*Proposed order or decree will be found at end of brief.*)

162 I.

The right of the court of appeals to determine the entire controversy on appeal from an order allowing a temporary injunction.

May it please the court:

The principal question at issue between the parties to this controversy, considered as a whole is, Has the complainant telegraph company the right to occupy with its telegraph lines the right of way of the defendant railroad company under and by virtue of a grant of Congress, July 24, 1866? This court, affirming the decision of the district court for the western district of Pennsylvania, holds that complainant's claim of right under said act of Congress is not warranted by the provisions of that act, and that the Supreme Court of the United States has so decided. This is disputed by the complainant, and it is evident that the controversy must ultimately be determined by the Supreme Court of the United States, itself, which will be called upon to interpret its own rulings on the act in question.

The good faith of complainant's purpose to have this done is not drawn in question. The reckless and wanton destruction of its entire property, covering the railroads owned and operated by the defendant railroad company, will not deter complainant in the prosecution of this purpose. We assume that in creating a tribunal of last resort, and giving parties litigant the right through intermediate stages to appeal thereto for the final determination of their controversies, it was the intention of the law that the subject matter of the litigation should be turned over to such ultimate authority, and that it should not evaporate *en route*.

163 That such protection of property involved may be conditioned upon the prompt prosecution of an appeal and the giving of adequate security to answer a failure in this regard, goes without saying. The present controversy between the parties to this suit can be heard and determined by the Supreme Court of the United States in a very few months at most, when, if it affirms the decision of this honorable court, it may turn complainant over to the tender mercies of the defendant, or suffer complainant to remove its lines of telegraph from the property of the defendant railroad company decently and in order, within a time and upon conditions to be prescribed by that tribunal.

It seems to us inconceivable that, considering the value of complainant's property as situated and its almost total lack of value as second-hand material, and considering, furthermore, the public and governmental functions which it fulfills, complainant may not hope to be protected by the courts pending the determination of its rights in the court of last resort. That this honorable court has the inherent power to afford such temporary protection, and that it is its duty, notwithstanding its adverse opinion on the merits of the controversy, to afford such protection, is established by overwhelming authority, with no case, so far as we can discover, to the contrary.

This honorable court has declared in its opinion that the fundamental position of the telegraph company, both in its petition for condemnation and in the bill of equity in support thereof, is untenable, which can only mean that, in the opinion of this honorable court, the bill of complaint does not state a cause of action, is amenable to demurrer and should be dismissed for want of equity. Such being the conclusion of this honorable court, we respectfully
164 submit that it is a determination of the merits of this controversy which should find expression in an order to the circuit court to dismiss complainant's bill for want of equity, thus enabling complainant to appeal to the Supreme Court of the United States. That the United States circuit court of appeals has the right, under the Everett's act, on an appeal from the allowance of a temporary injunction, to determine the merits of the controversy on the bill filed is no longer open to question.

In Stover Mfg. Co. *vs.* Mast, Foos & Co., 89 Fed. Rep., 333, the circuit court of appeals for the seventh circuit, in dissolving an interlocutory order of injunction against the infringement of letters patent, concluded its opinion as follows (p. 340):

"It is not perceived that further proofs are are possibly of a character to change the result. The decree or order below is, therefore, reversed, *with directions to dismiss the bill for want of equity.*"

On *certiorari* from the Supreme Court of the United States (177 U. S., 485), it was said (p. 494) by Mr. Justice Brown on behalf of a unanimous court:

"One of the principal questions pressed upon our attention related to the power of the court of appeals to order the dismissal of the bill before answer filed, or proofs taken, upon appeal from an order granting a temporary injunction.

"This question is not necessarily concluded by Smith *vs.* Vulcan Iron Works, 165 U. S., 508, since in that case the interlocutory injunction was granted after answer and replication filed, full hearing had upon pleadings and proofs, and an interlocutory decree entered adjudging the validity of the patent, the infringement and injunction, and a reference of the case to a master to take an account of profits and damages.

"In that case we held that, if the appellate court were of opinion that the plaintiff was not entitled to an injunction, *because his bill was devoid of equity, such court might, to save the parties from*
165 *further litigation, proceed to consider and decide the case upon its merits, and direct a final decree dismissing the bill.*

"Does this doctrine apply to a case where a temporary injunction is granted *pendente lite* upon affidavits and immediately upon the filing of the bill? We are of opinion that this must be determined from the circumstances of the particular case. If the showing made by the plaintiff be incomplete, if the order for the injunction be reversed, because injunction was not the proper remedy, or because under the particular circumstance of the case, it should not have been granted; or if other relief be possible, notwithstanding the injunction be refused, then, clearly, the case should be remanded for

a full hearing upon pleadings and proofs. *But if the bill be obviously devoid of equity upon its face, and such invalidity be incapable of remedy by amendment*; or if the patent manifestly fail to disclose a patentable novelty in the invention, we know of no reason why, *to save a protracted litigation, the court may not order the bill to be dismissed.* Ordinarily, if the case involve a question of fact, as of anticipation or infringement, we think the parties are *entitled* to put in their evidence in the manner prescribed by the rules of this court for taking testimony in equity causes. But if there be nothing in the affidavits tending to throw a doubt upon the existence or date of the anticipating devices, and, giving them their proper effect, they establish the invalidity of the patent; or if no question be made regarding the identity of the alleged infringing device, and it appear clear that such device is not an infringement, and no suggestion be made of further proofs upon the subject, we think the court should not only overrule the order for the injunction, *but dismiss the bill.* * * * The power was properly exercised in this case."

Here, it will be observed, the circuit court of appeals passed upon the merits of a controversy on an appeal from an interlocutory order of injunction *against the protest of the complainant who claimed that he was entitled to have the case remanded.* In the case at bar the complainant, *having made its full case upon its bill and this court being fully persuaded that such bill does not entitle it to an injunction*, is respectfully insisting that the order entered should conform to
166 the opinion of the court, so that an immediate appeal can be prosecuted to the Supreme Court of the United States.

II.

The preservation of the *status quo* pending appeal.

It seems to us desirable on all accounts, public and private, that the issues in this cause should be speedily determined by a court of last resort; and it seems to us equally clear that the rights involved and the property at stake should be turned over to that court without diminution, to be finally dealt with as that court may determine.

To be sure, in reversing the interlocutory order of injunction granted by the circuit court for the district of New Jersey, this honorable court does not *affirmatively* declare the right of the defendant company to destroy the property of the complainant or recover possession of its property, hitherto occupied by the complainant, *vi et armis;* but it is evident from recent manifestations that, without resort to legal proceedings, the defendant will, unless restrained, so recover possession of its property and destroy and annihilate the property of the complainant, unless met by overwhelming physical resistance by the complainant. Such a method of asserting or defending rights commends itself neither to the sober judgment of a court nor to the duties of good citizenship.

If great corporations, employing thousands of laborers, are
167 permitted to take the law into their own hands, and vindicate an alleged right by force of arms and wager of battle, shall

we blame their employees for doing the same? In the meantime, the average citizen is apt to ask, "What are the courts for?"

It nowhere appears in the record of this case that the lapse of a few weeks, or months at most, can work irreparable injury to the defendant. It does appear that the destruction of complainant's property by violence, not only inflicts irreparable injury upon the complainant, but robs the Supreme Court of the United States of jurisdiction over everything save the abstract questions of law involved. The right of appeal becomes an empty right.

In Hovey *vs.* McDonald, 109 U. S., 150, it was held that a decree in equity dissolving an injunction is not affected by a supersedeas, *unless the court below order the continuance of the injunction pending appeal;* that whether this should be done depends upon the facts of the particular case. Mr. Justice Bradley, on behalf of a unanimous court, says:

"The truth is, that the case is not governed by the ordinary rules that relate to a supersedeas of execution, but by those principles and rules which relate to chancery proceedings exclusively. It depends upon the effect which, according to the principles and usages of a court of equity, an appeal has upon the proceedings and decree of the court appealed from, and the doctrines which apply to a supersedeas can only be brought in by way of analogy."

After referring to the law of England on the subject, the learned judge adds:

"In this country the matter is usually regulated by statute or rules of court and, generally speaking, an appeal upon giving the security required by law (when security is required) suspends further proceedings and operates as a supersedeas of execution. This, as we have seen, is the case in the circuit courts of the United
168 States. But the decree itself, without further proceedings, *may have an intrinsic effect which can only be suspended by an affirmative order either of the court which makes the decree or of the appellate tribunal.*"

The learned judge further says:

"It was decided that neither a decree for an injunction nor a decree dissolving an injunction was suspended in its effect by the writ of error, though all the requisites for a sepersedeas were complied with. It was *not* decided that the court below had no power, *if the purposes of justice required it, to order a continuance of the status quo until a decision should be made by the appellate court, or until that court should order the contrary. This power undoubtedly exists, and should always be exercised when any irremediable injury may result from the effect of the decree as rendered.* * * * Judging only from what appears in the record, we cannot refrain from saying that in this case the latter course would have been eminently proper. It would have protected all parties and produced injury to none."

In Bronson *vs.* La Crosse R. Co., 68 U. S. (1 Wall.), 405, the Supreme Court of the United States, by Mr. Justice Nelson, says, (p. 410):

"To guard against misconstruction *in respect to the powers of a*

court having jurisdiction over the subject matter, and where a decree has been rendered affecting the property in litigation—the road in this case—and an appeal is taken to this court, as the property in controversy is not brought into the appellate tribunal, but remains in the custody and care of the court below, *it is agreed that full power exists in that court, pending the appeal, to adopt all proper and judicious measures to protect and preserve it from waste or loss.*"

In Cotting *vs.* Kansas City Stock Yards Co. (82 Fed., 850), Judge Thayer, dissolving a temporary injunction and dismissing complainant's bill of complaint, nevertheless made an order to preserve the *status quo* pending appeal. The learned judge says (p. 857):

"The great importance of the questions involved in these cases will doubtless occasion an appeal to the Supreme Court of
169 the United States, where they will be finally settled and determined. If, on such appeal, the Kansas statute complained of should be adjudged invalid for any reason, and in the meantime the statutory schedule of rates should be enforced, the stock-yards company would sustain a great and irreparable loss. Under such circumstances, as was said, in substance, by the Supreme Court in Hovey *vs.* McDonald, 109 U. S., 150, 161, *it is the right and duty of the trial court to maintain, if possible, the status quo pending an appeal, if the questions at issue are involved in doubt; and equity rule 93 was enacted in recognition of that right.* The court is of opinion that the cases at bar are of such moment, and the questions at issue so balanced with doubt, as to justify and require an exercise of the power in question. Therefore, although the bills will be dismissed, *yet an order will at the same time be entered restoring and continuing in force the injunction which was heretofore granted, for the term of 10 days, and if, in the meantime, an appeal shall be taken, such injunction will be continued in force until the appeal is heard and determined in the Supreme Court of the United States: Provided that, in addition to the ordinary appeal bond, the Kansas City Stock Yards Company shall make and file in this court its bond in the penal sum of $200,000, payable to the clerk of this court and his successors in office, for the benefit of whom it may concern, conditioned that, in the event the decree dismissing the bills is affirmed, it will, on demand, pay to the party or parties entitled thereto all overcharges for yarding and feeding live stock at its stock yards in Kansas City, Kan., and Kansas City, Mo., which it may have exacted in violation of sections 4 and 5 of the Kansas statute relative to stock yards, approved March 3, 1897, since an injunction was first awarded herein, to wit, on April —, 1897, and that it will in like manner pay such overcharges, if any, as it may continue to exact in violation of said statute during the pendency of the appeal; said obligation to become void if the statute in question shall be pronounced invalid by the Supreme Court.*"

In Staffords *et al. vs.* King, 90 Fed., 136, the circuit court of appeals for the fourth circuit held that

"while an appeal from an order dissolving an injunction, though with a supersedeas, does not reinstate the injunction in force, *yet the*

court may, in its discretion, do so by an affirmative order; and where, in the order allowing the appeal and supersedeas, the court
170 provided that pending such appeal, the order dissolving the injunction should stand suspended and superseded; and after a decision by the circuit court of appeals affirming the order of dissolution, but before its mandate had been sent to the circuit court, the cause and record were removed to the Supreme Court by a writ of *certiorari*, the injunction remains in full force and must be respected and enforced until final disposition of the case in the Supreme Court."

In Mining Co. *vs.* Mining Co., 5 Utah, 182, (12 Pac., 660), the second syllabus reads as follows:

"An appeal from the supreme court of Utah Territory to the Supreme Court of the United States must be taken in the same manner and under the same regulations as from the circuit courts of the United States. *The supreme court of the Territory, therefore, possesses the power to make an order of injunction preserving the status quo until a decision be made in the Supreme Court of the United States.*"

After considering the case of Hovey *vs.* McDonald, *supra*, and several other decisions, the court say (5 Utah, p. 185):

"Speaking with respect to appeals from the circuit courts of the United States and other courts, in the case of Hovey *vs.* McDonald, *supra*, the court held that power undoubtedly exists to order a continuance of the *status quo* until a decision should be made by the appellate court, or until that court should order the contrary. * * * *In this grant of power it appears reasonable that the authority should be implied to restrain the effect of the judgment appealed from so as to preserve the subject of litigation for disposition according to the final judgment of the appellate court. The object of the appeal is not to give that tribunal of last resort merely an opportunity to make a vain display of its power and wisdom.* The appeal in this case was given that the parties might have their rights to the property in question determined, and that it might be given to the one entitled to it as finally decided. If, when that decision shall be made, the property shall be beyond the effect of the decree and the process of the court, and the party to whom it may be adjudged does not get it, *the purpose of the appeal will have been defeated, and the ends of justice will not have been reached.*"

171 In Hart & Hoyt *vs.* Mayor, etc. of Albany, 3 Paige Chan., 381, there was an appeal from the decision of Chancellor Walworth, denying an injunction to restrain a corporation of Albany and their dock master from removing from the Albany basin an ark, or floating storehouse, which the complainants had erected and moored therein, contrary to an ordinance of the corporation (see same volume, p. 213). The defendants, pending the appeal, were proceeding to carry into effect the ordinance of the corporation, by removing from the basin the ark or floating storehouse referred to in the bill. To effect this object it would be necessary to destroy the storehouse by taking it to pieces. The complainants presented a

petition to the chancellor, stating these facts; and also stating that the appeal was brought in good faith, for the purpose of settling the rights of the parties; that the destruction of the ark or storehouse would be a very serious injury to the complainants, if they succeeded in their appeal; but that it could not be of any material damage to the defendants or the public to have it remain in its present situation, until the decision of the court of errors upon the questions in controversy between the parties. The petitioners, therefore, asked for an order restraining the defendants from proceeding under the ordinance of the common council, pending the appeal.

Says Chancellor Walworth, to whom the application was made (p. 382):

"It is supposed by the complainant's counsel that the appeal from an order dissolving an injunction has, under the provisions of the Revised Statutes, the effect of nullifying the order pending the appeal, so as to prevent the dissolution of the injunction and to deprive the defendants of the right to go on with their proceedings under the law of the corporation, or to do any act contrary to the
172 prohibition contained in the injunction. But if they should be wrong in their construction of the statute, the complainants then ask the court to exercise *a judicial discretion*, under the peculiar circumstances of this case, *and that they may have an order in the nature of a temporary injunction to stay the proceedings of the defendants pending an appeal, so as to give the appellants the benefit of the decision of the court for the correction of errors, if it should be in their favor.*"

After stating that the appeal did not suspend the order for the dissolution of the injunction and reviewing English authorities and the history of the practice on appeal, the learned chancellor says (p. 385):

"Having arrived at the conclusion that the provisions of the Revised Statutes do not suspend the operation of the order appealed from, so as to restore the injunction and entitle the appellants to an order to stay the proceedings of the defendants as a matter of strict right, it becomes necessary to inquire whether this court has the power to suspend the operation of the order until under the decision of the court for the correction of errors on the appeal; and if it has such power, whether this is a proper case for the exercise of the judicial discretion of the chancellor in this respect. As the application here is not to stay any proceeding in the suit, but to restrain a proceeding by the defendants out of court, the granting of the order will unquestionably be an original exercise of judicial power over the parties in the cause. *Such power, however, is frequently exercised by the superior courts over the suitors and parties therein for the advancement of justice;* and the granting a preliminary injunction in this court, before the rights of the parties are finally determined, always proceeds upon the same principle. The only reasonable ground of objection to such a proceeding, therefore, is that it seems inconsistent for the court to make an order to restrain a party from proceeding, after it has, upon a full hearing of both parties, decided

that he has both a legal and equitable right to proceed. But this objection would equally apply to all the orders in the English court of chancery to stay the proceedings on a decree or order of the court by which the rights of the parties have been established by the same court. * * * *If the decision of this court was wrong, it may prevent an unnecessary sacrifice of property, and save future litigation, to re-*
173 *strain the defendants from proceeding until after the next session of the court for the correction of errors. If, therefore, the complainant's solicitor will stipulate to expedite the proceedings on the appeal, so as to enable the respondents to bring the same to a hearing at the next August term of that court, a temporary injunction must be granted, restraining the defendants from destroying the ark or storehouse, or from taking it to pieces or removing it from the basin, until after the session of the court for the correction of errors in December next; unless the appeal shall be sooner dismissed or otherwise disposed of by that court.*"

In Jewett *vs.* Albany City Bank, Clark's Ch. Rep., 57, it was held, after the dissolution of a temporary injunction (p. 60):

"I am not prepared to say that they (the obstacles in question) are insurmountable, but they are sufficiently formidable to prevent granting the order, unless *great and irreparable mischief would follow from its refusal.* Such was the case in Hart *vs.* The Mayor of Albany. There would have been a destruction of property which could not be restored."

In Waterman *vs.* Raymond, 5 Wis. Rep., 185, there was an order made by one of the justices of the supreme court at chambers, staying the action of the parties litigant until an appeal taken by the defendants should be heard and determined in the supreme court. On motion to vacate this order it was held (p. 186), *per curiam:*

"*Undoubtedly this court has the power to order a stay of proceedings in the court below touching any matter of appeal to this court.* As we have no doubt that a justice of this court has the power in vacation to make a provisional order for such stay of proceedings, to enable the party to make or renew, if need be, a similar motion in term. * * * No fixed rule can be laid down, but the action of the justice or court must depend upon the equities of the particular application, *and where great or irreparable injury is liable to result from the prosecution of the cause, after an appeal from an interlocutory order, the power ought to be exercised.*"

174 In Hudson *vs.* Smith, 9 Wis., 122, suit was brought by the plaintiff below to recover of the defendants below possession of the gas works in the city of Janesville. An order was made by the judge of the circuit court that a receiver be appointed. From this order an appeal was immediately taken and perfected. The judge, however, proceeded under the order to the appointment of the receiver, when an application was made to him by the appellants to fix the sum in which an undertaking should be executed in order to stay proceedings under the provisions of section 2, chapter 130 of the Laws of 1859. This he refused to do, holding that this

section was intended to apply only to actions brought for the recovery of money.

The appellants then moved the Supreme Court to compel the circuit judge by mandamus to fix the amount of such an undertaking; or to make an order itself, staying the proceedings, offering at the same time to give bond in such sum and with such condition as the Supreme Court should direct. Without deciding whether the appellants were entitled to a stay under the provisions of the act of 1859, before referred to, the Supreme Court granted an order, staying appellants on the appellants filing an undertaking in the sum of $10,000, conditioned to pay and abide by any judgment that finally might be rendered in the suit. The defendants moved to vacate this order, and several questions were discussed, among which were the following: 1. Whether the appellants were entitled to a stay of proceedings under the act of 1859. 2. Whether, if not, the perfecting of the appeal itself worked a stay; and, lastly, if it depended entirely *on the general power of this court to stay proceedings in*
175 *any matter appealed to it, which power was conceded*, whether the court ought in this case to continue the order in force.

Say the court:

"It is undoubtedly the general policy of the law to allow any party against whom judicial proceedings are commenced to stay proceedings under the decision of any inferior tribunal against him, from which he has appealed, on giving just and adequate security. * * * And in this case, *if there is no law entitling the party to a stay of proceedings in any event, on an order appointing a receiver of his property from which he has appealed, it would seem to be an omission entirely inconsistent with the general spirit of the provisions of the law on this subject; and, so regarding it, we should be inclined to allow a stay of proceedings, without inquiring into the case further than to determine what security, if any, should be given.*"

In Levy *vs.* Goldbery, 40 Wis. 308, it was said per Lyon, J. (p. 311):

"It was held in Hudson *vs.* Smith, 9 Wis., 122, that the power of this court to stay proceedings in any matter appealed to it, does not altogether depend upon statutory enactment, *but is inherent in the court.* * * * It seems to us that this motion is within the spirit of the rule. Although this appeal is not from the judgment in form, yet it is so in substance and effect. * * * *It is obvious that unless the motion be granted, the defendant is in danger of losing the benefit of his appeal, should it be determined in his favor.* * * *

"The circuit court undoubtedly had power to stay proceedings on the judgment, but that court refused to do so. The appeal having been perfected, this court will grant the same relief."

In City of Janesville *vs.* Janesville Water Co., 61 N. W., 770, the first syllabus reads as follows:

"The supreme court has power to stay the proceedings in a case before it during the pendency of the appeal."

Say the court, per Pinney, J.:

"*This court has the inherent power, by virtue of its appellate jurisdic-*

tion, to grant the order applied for, and to restore the parties, so
176 *far as may be, to their condition in respect to the matters affected by the order at the time it was granted.* This has been held in many cases, and in Northwestern Mut. Life Ins. Co. *v.* Park Hotel Co., 37 Wis., 131, the authority of the court to grant the relief sought by this motion is clearly and vigorously enforced. (This was an opinion by Justice Ryan, one of the greatest jurists the West ever produced.) To the same effect are the cases of Hudson *v.* Smith, 9 Wis., 122, and Levy *v.* Goldberg, 40 Wis., 308, and since then this power has been exercised in numerous unreported instances. Appeals from orders and judgments, in the cases allowed by law, *are a matter of right;* and within the limitation that the appeal is taken and prosecuted in good faith, and that the party asking it gives the reasonable security required for that purpose, *a stay of proceedings during the pendency of an appeal is quite of course, and really a matter of right, without which an appeal allowed by law would often prove fruitless, and the appellate jurisdiction of the court be found inadequate to the ends of justice and the proper protection of the rights of parties during the pendency of the appeal.*"

In Coleman *vs.* Phelps, 24 Hun, 320, an interlocutory judgment was entered, adjudging the deed given by the plaintiff to the defendant to have been procured by fraudulent misrepresentations and undue influence, and directing that it be given up and canceled, and also providing for a reference to take and state an account of the rents received from the premises and the payments made on account thereof. An appeal having been taken from the interlocutory judgment, an application was made for a stay of all further proceedings during the pendency thereof.

Held, that the stay should have been granted.

In this case, under a section of the code, the appeal in question did not operate as a stay without special order from the court, but we submit that the statute giving the court this power only confirmed a power inherent in every court of record to control the property and the actions of the parties over which it has jurisdiction.

177 In Smith, etc., *vs.* Western Un. Tel. Co., 83 Ky., 269, it was held that

"Where on final hearing an injunction has been dissolved, the execution of a supersedeas bond by the plaintiff and the service of an order of supersedeas leaves the injunction in full force, and the defendant is guilty of contempt if he disregards it."

It will be observed that this case gives full effect to the English doctrine that an appeal is itself a supersedeas, whereas the doctrine usually applied in America is to require an *additional* order.

The court say (p. 272):

"If one is about to tear down my home, or waste and destroy my property, so as to produce irreparable injury, an injunction having been obtained, *although subsequently dissolved, will remain in full force if the proceedings are stayed by a supersedeas.*"

Van Walkenburgh vs. Railway Bank, 8 N. J. Eq., 725, the first syllabus reads as follows:

"On appeal from an order of the chancellor dissolving an injunction, the court of appeals will usually make an order in the nature of a temporary injunction, retaining the parties and the subject matter in statu quo until the final hearing of the appeal, where the whole matter in controversy is the continuance of the injunction, as on a pure injunction bill, or where it appears that such an order is necessary to prevent great and irreparable mischief to the rights of the appellant."

In Williams vs. Hilton, 6 So. Rep., 472, a case arising in Florida, an appeal was taken from an order dissolving an injunction previously granted. The Chief Justice of the Supreme Court, on application of appellant, granted a supersedeas, and a motion was made to vacate the supersedeas. The holding of the court was summed up in the third syllabus as follows:

"3. On application for the supersedeas, in appeal from an interlocutory order or decree, the judge or justice is not re-
178 quired to satisfy his mind on litigated questions, but to see, from an inspection of the record, that there is an appeal; that it is not frivolous; and that the state of the case as to its future course is such as to render a stay of proceedings proper."

In Home Fire Ins. Co. vs. Dutcher, an unusually well-considered case in Nebraska, reported in 67 N. W., 706, the facts were that the Home Fire Insurance Company instituted an action in the district court of Douglas county to foreclose a mortgage executed by Warren Dutcher on premises which he afterwards conveyed to defendant A. J. Dutcher. There was a prayer for a receiver pendente lite. The district court sustained said application, and appointed a receiver for the premises. From this order the defendants appealed. A bond was given on appeal, and a motion was made to strike it from the files on the grounds: First, that there was no authority in law for superseding an order appointing a receiver pendente lite; and, second, that if such an order might be superseded, the bond should be conditioned to pay the reasonable rental value of the property, pending appeal. This motion the court sustained, and, an application having been made by the receiver for a writ of assistance, the appellants made application to the supreme court for an order restraining the district court and the receiver from taking any further steps pending the appeal.

The court say:

"The primary question presented is that stated as the first ground of the motion to strike the bond from the files, to wit, Is there any authority for superseding an order appointing a receiver pendente lite? * * * The question so presented is by no means free from difficulty. A supersedeas is now almost everywhere so much controlled by statute, and the statutes are so different in their provisions, that but little assistance can be had from the adjudications of other

States. After a severe struggle it became established in
179 England that an appeal of itself operated as a supersedeas. Following the analogy of this practice, it is held in some States that statutes providing special conditions, such as the giving of a bond, in order to affect a supersedeas, are merely restrictive in their character, and that the appeal itself works a supersedeas where there is no statute requiring a bond or a compliance with other conditions. A different doctrine has, however, been announced in this State; and it must be accepted as the established rule here that a supersedeas can be had, as a matter of right, only where it is affirmatively provided for by statute. * * * For several reasons we think that section 677 of the code should not be so construed as to authorize a supersedeas of an order appointing a receiver *pendente lite* as a matter of right. * * * The most conclusive reason, however, for the construction which we have indicated is that the appointment of a receiver is a provisional remedy. It does not adjudicate any rights. Its purpose is merely the protection of the property in dispute pending the action. Provisional orders are usually summary, frequently not subject to review, always largely discretionary, and almost universally not subject to be superseded. * * * As pointed out already, to allow a supersedeas as a matter of right would, in many cases, defeat the whole purpose of the order, and we think the obvious intention of the legislature was that such purpose should not be in that manner defeated, and for that reason no provision was made for superseding such an order. * * *

"In holding that a party may not, as a matter of right, supersede an order appointing a receiver, *we do not hold that a supersedeas may not be granted in the discretion of the court.* This court has already held that a writ of ouster in a *quo warranto* case and a writ of mandamus are writs which may not be superseded as a matter of right; but it has also held that the court may, in its discretion, allow a supersedeas in such cases" (citing cases). "It is quite clear from the record that the district court has been proceeding on the theory *that there was no authority whatever for a supersedeas in this case,* and has not exercised, or been called upon to exercise, its discretion in granting or refusing a supersedeas. This court now has jurisdiction of the case on appeal, *and we have no doubt of its power to itself grant a stay on proper conditions*" (citing City of Janesville *vs.* Janesville Water Co., 89 Wis., 159, 61 N. W., 770; Haught *vs.* Irwin, 166 Pa. St., 548, 31 Atl., 260).

180 "*Inasmuch as the allowing of a stay is wholly a matter of discretion, it follows that the court may, in allowing the stay, affix such conditions as in its judgment, are necessary for the protection of the parties.* A bond conditioned merely not to commit waste is, as we have seen, not a sufficient protection. We think the bond should be further conditioned to pay the reasonable rental value of the property to the receiver in case the order appointing him should be affirmed. * * * If a bond in that sum, and so conditioned, be filed within twenty days, with sureties approved by the clerk of the

district court, the enforcement of the order will be suspended pending appeal. If not so given, the order heretofore entered, staying proceedings, will stand discharged."

In Ferguson *vs.* Dent, 29 Fed., 1, it is said (p. 5):

"I doubt if a case can be found surrendering a possession, so taken, to the triumphant plaintiff, if the defendant appeals, and the court be unrestricted by some limitation on its powers in that regard. Has our statute abrogated all such equitable considerations, and required us here, without inquiry into other facts, to surrender possession because of this omission in the bond? I think not. * * * We are forced to acknowledge that those courts (courts of equity) have not been shorn of their ordinary power to stay proceedings pending an appeal, outside of and beyond this statute. * * * The appellate court may, beyond question, control the exercise of the power, but still it exists, and, in my judgment, the most important consideration to govern the discretion is that which demands that we save that control of the appellate court which it should always have over the *res* to make its jurisdiction effectual. Just as before the appeal, it was within the power of this court, why should not we do all we ought, to transfer the control to the appellate court? If it be equitable to commence the judicial custody, generally it would be equitable to continue it. * * *

"We allow no man to eject the receiver or to sue him, or to tear down the buildings (which power has been invoked in this case as against the city police) without our consent."

Further (p. 9):

"Being better informed, the court finds it has larger power
181 than it was aware of, and that its continued control does not depend at all upon whether a bond was given or not. I think it is not precluded by the final decree from exercising that larger power. * * * There is no reason why the court may not exercise it at any time, particularly since Goddard *v.* Ordway, 94 U. S., 672, decides that it is the duty of the court below, notwithstanding an appeal, to give the necessary orders to preserve the property in the hands of the receiver pending the appeal whenever it remains in its possession."

Respectfully submitted,

JOHN F. DILLON,
RUSH TAGGART,
R. V. LINDABURY,
HENRY D. ESTABROOK,
For Appellee.

182 The following is the form of decree proposed by the appellee, viz:

United States Circuit Court of Appeals for the Third Circuit,
—— Term, 1903.

THE PENNSYLVANIA RAILROAD COMPANY and THE UNITED NEW JERSEY RAILROAD AND CANAL COMPANY, Appellants,
vs.
THE WESTERN UNION TELEGRAPH COMPANY, Appellee.

This cause coming on to be further heard upon the motion to settle the form of order or decree to be entered upon the opinion heretofore entered herein by this court, and counsel for the respective parties having been heard, and this court being fully advised in the premises, it is

Ordered and decreed that the judgment and order of the circuit court of the United States for the district of New Jersey, awarding a preliminary injunction according to the prayer of the bill of complaint, be and the same hereby is reversed.

And it is further ordered and decreed that for want of equity appearing on the face of the bill of complaint filed herein, and for the reasons stated in the opinion of this court rendered and filed herein, the said circuit court be, and it hereby is, directed to dismiss the bill of complaint of the Western Union Telegraph Company for want of equity.

183 And it is further ordered that the said complainant pay the costs in this court and in the said circuit court of the United States for the district of New Jersey.

And thereupon comes complainant and prays an appeal from the foregoing order and decree to the Supreme Court of the United States, which appeal is allowed (and the bond on such appeal is hereby fixed at the sum of one thousand dollars ($1,000), to be approved by a justice of the Supreme Court of the United States).

And it is further ordered that the *status quo* and the present condition of the parties and property here involved be continued and maintained until a decision shall be made on this appeal by the Supreme Court of the United States, or until that court shall order to the contrary, provided, however, that said complainant shall without delay perfect said appeal and prosecute the same with diligence in the Supreme Court; and shall moreover within 20 days give a bond to the defendants conditioned that it will prosecute its appeal to effect and failing to make its plea good, shall also answer all damages and costs and that said bond shall be in the amount of — dollars, to be approved by one of the justices of this court or by a justice of the Supreme Court of the United States.

184 Ex. C.

(Copy of letter.)

The Pennsylvania Railroad Company, general office, Broad Street station.

Office of the general manager.

PHILADELPHIA, *June 13th*, 1903.

Mr. B. Brooks, general sup't Western Union Telegraph Company, New York, N. Y.

DEAR SIR: Confirming my telegram of even date, the space now occupied by the poles and wires of the Western Union Telegraph Company on the lines of railroad and property of the United New Jersey Railroad and Canal Company, and its controlled and affiliated companies in the State of New Jersey, is immediately required for necessary use by the Pennsylvania Railroad Company, its lessee, but, before removing same, I beg to refer to the offer of purchase made in President Cassatt's letter to your President Clowry of July 5th, 1902, and to renew the offer therein made to buy these poles and wires at a fair valuation and thus save your company the loss involved through their removal. Unless this offer be accepted before twelve o'clock noon on Monday, the fifteenth instant, it will be understood as declined.

Yours truly,

(Signed) W. W. ATTERBURY,
General Manager.

185 (*Telegram.*)

NEW YORK, *June* 15, 1903.

A. J. Cassatt, president Pennsylvania Railroad Company, Philadelphia, Pa.:

The offer of your company made through your general manager, Mr. Atterbury, to purchase the lines of telegraph, now owned and operated by this company involved in the New Jersey case and requiring answer by twelve o'clock noon on this date, with notice that unless your company's offer is accepted within that time your company will proceed to take forcible possession of such lines and remove the same from its right of way, was duly received, and has been considered as thoroughly as the time allowed has permitted, I have previously informed you that this property is an important and necessary part of the system of the Western Union Telegraph Company, and ordinarily that company would never think of selling it. Moreover, I am advised by counsel that it is doubtful if the law would permit it ordinarily to alienate property thus dedicated

190 UNITED STATES OF AMERICA, *ss:*

To The Pennsylvania Railroad Company and The United New Jersey Railroad and Canal Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to the allowance of an appeal, filed in the clerk's office of the United States circuit court of appeals for the third circuit, wherein The Western Union Telegraph Company is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant as in the said allowance of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. W. Peckham, associate justice of the Supreme Court of the United States, this seventeenth day of June, in the year of our Lord one thousand *eight* hundred and ninety-three.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

I accept service of the foregoing citation on behalf of both appellees.

JOHN. G. JOHNSON.

June 30, 1903.

[Endorsed:] In the Supreme Court of the United States. W. U. Tel. Co., pl'ff in error, *v.* Penna. R. R. Co., def't in error. Citation on appeal. Original.

191 UNITED STATES OF AMERICA, *sct:*

I, William H. Merrick, clerk of the United States circuit court of appeals, for the third circuit, do hereby certify the foregoing pages from one to one hundred and ninety inclusive to contain a full, true, complete and faithful copy of the original transcript of record and proceedings in the case of The Western Union Telegraph Company, appellant, *vs.* The Pennsylvania Railroad Company and The United New Jersey Railroad & Canal Company, appellees, on file, and now remaining among the records of the said court, in my office.

Seal United States Circuit Court of Appeals, Third Circuit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this sixteenth day — July, in the year of our Lord one thousand nine hundred and

three, and of the Independence of the United States the one hundred and twenty-eighth.

WM. H. MERRICK,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

Endorsed on cover: File No. 19,018. U. S. circuit court of appeals, 3d circuit. Term No. 367. The Western Union Telegraph Company, appellant, *vs.* The Pennsylvania Railroad Company and The United New Jersey Railroad and Canal Co. Filed July 23d, 1903.